

# THE NEW CONSTITUTION OF INDIA

BEING THREE RHODES LECTURES

BY

SIR COURTENAY ILBERT

AND THREE BY

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### NOTE TO LECTURES I, II, AND III

*The three lectures for which I am responsible are not what I had hoped and intended to make them. Unexpected, severe and prolonged illness placed difficulties almost insuperable in the way of their preparation, made personal delivery of them impossible, and prevented me from revising them. For their delivery on my behalf I owe a debt of gratitude to my daughter, Mrs. Herbert Fisher.*

C. P. ILBERT.

LECTURES BY  
SIR COURTENAY ILBERT

FORMING

*LECTURE I: Preliminary*

*LECTURE II: The Provincial Governments*

*LECTURE III: The Central Governments*



# THE NEW CONSTITUTION OF INDIA

## LECTURE I

### PRELIMINARY

WHEN Sir Gregory Foster asked me last Christmas, on behalf of the authorities of University College, to give two or three lectures on the new Indian Constitution under the Act of 1919, I appreciated the compliment highly. But I felt many doubts and misgivings about my ability to perform the task. The subject is big, difficult, controversial—very big, very difficult, very controversial. What justification can an octogenarian plead, what excuse can he offer, for attempting such a task? One justification I cannot plead. I have no right to speak to you about the India of to-day, because it is an India of which

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I have no first-hand knowledge, which I know only from hearsay. Therefore I cannot give you any of those descriptions of present-day India, its phases and conditions, social, economic and political, which have made Sir Valentine Chirol's last book such delightful reading. I left India towards the end of 1886, and have never had the good fortune of revisiting it. And all my friends who know India best assure me that between the India of the eighties and the India of to-day there is such a gulf that impressions drawn from experiences of the India of the eighties would be utterly misleading if applied to the India of to-day. The only excuse I can offer for myself is that at various times during the last forty years or so I have been compelled to devote some attention to the history of parliamentary legislation for India. So it is from that point of view, the general constitutional rather than the special Indian point of view, the point of view of Westminster rather than that of Delhi, that I must approach my subject. All that I can do within the limited time at my disposal is to touch very lightly on a few of its many aspects.

I propose in the first lecture to speak about the factors which brought about a change in the British policy of governing India, and

then, in the two following lectures, to say something about the new system of Indian provincial government, and the new system of Indian central government.

What should be treated as the starting-point of the new departure made in 1919? For many purposes it is convenient to take as that starting-point Mr. Montagu's announcement, or pronouncement, or declaration, of August 20, 1917. He then struck the keynote of the policy embodied rather more than two years later in an Act of Parliament. His was the first authoritative statement of that policy. When Mr. Montagu made it in the House of Commons he spoke as Secretary of State for India; and spoke on behalf of the British Cabinet, of the India Office, and of the Government of India. Therefore he spoke with the fullest ministerial authority and responsibility. His statement was afterwards fully reproduced in the preamble to the Act of 1919, and as that preamble carries with it, not merely ministerial but parliamentary authority, and constitutes the pledge given by Parliament to the people of India, his statement had better be quoted in the form in which it is so reproduced. The preamble runs as follows:

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“Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire :

“And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

“And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

“And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

“And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities.”



∴ Probably the first thing which will strike you about this declaration is the deliberate avoidance of anything like rigidity or finality. It promises an advance in a particular direction. But the advance is to be cautious and gradual. The nature and times of the progressive stages of the advance are to be contingent on circumstances. The new arrangements are to be temporary, provisional, experimental. Growth is what is aimed at, growth, not a static condition. The mode and pace of growth cannot be foreseen with any precision. Any attempt to stereotype them would be fatal to the objects in view. The new Indian constitution is not so much a new building as a tent. It is like one of those caravanserais which would be run up rapidly for an Indian prince to meet a temporary need, and which could be easily removed or transformed when the need had passed. Some of you may remember a well-known stanza in FitzGerald's Omar Khayyám:

“ 'Tis but a tent where takes his one day's rest  
A Sultan to the realm of Death addrest.  
The Sultan rises, and the dark Ferrash  
Strikes, and prepares it for another Guest.”

But the time for striking this tent of ours is still in the future. Our immediate business

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is to make the best use of it that we can. When you look at the Act which embodies this policy you will find that everything has been done to provide elasticity, and to facilitate alterations when alterations seem to be needed.

Who was the real author of the new Act and its policy? That was a question on which Mr. Montagu had much to say when he moved the second reading of his Bill. Athena is said to have sprung from the brain of Zeus full grown and fully armed. But that is not how new constitutions are born. The papers laid before Parliament and Mr. Montagu's second-reading speech showed that the pledges given in 1917 were the outcome of long and careful deliberations both in England and in India, and that these deliberations were based upon suggestions proceeding at different times from many different quarters. Among such suggestions, those which come from the ingenious and fertile brain of Mr. Lionel Curtis take an honourable place. Nothing could have been more laudable than the zeal and enthusiasm with which he approached and attacked the Indian problems of his day, nothing more useful than the knowledge which he brought to bear upon them. His suggestions have borne ample

fruit. But to speak of him as the author of the new constitution is to misconceive the situation. The honour of the responsibility for devising and framing it must be much more widely distributed.

There has been no real breach of continuity in the policy of the India Office. But for events in Mesopotamia Mr. Austen Chamberlain might have been called upon to undertake the mission to India which was carried out by his successor in office.

The most significant phrase in the declaration of 1917, that which created the greatest alarm in some breasts, which roused the most sanguine expectations in others, is the phrase "responsible government." This phrase is almost as conveniently and dangerously comprehensive as the phrase "dominion government" in its application to Ireland. What does it mean? What are its connotations and implications? Its adoption was probably suggested by its use in the self-governing dominions of the British Empire, and its origin, variations, and developments there are fully described in Professor Berriedale Keith's admirable book on *Responsible Government in the Dominions*. You will find there that the expression was first applied to the Government of Canada in connection

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with Lord Durham's famous letter of 1839, and has since been extended to all the other self-governing dominions.

Let me ask again, what does the expression mean? Responsible government, responsible to whom? Not merely to official superiors, though that responsibility remains, but primarily and specially to elected representatives of the people governed. Now in the self-governing dominions both the expression and the system which it indicates, both the name and the thing, are at home. Canadians, Australians, and New Zealanders understand the system and how it is worked. They are familiar with its merits and with its defects. They do not claim that it is a perfect system. No system of government is. But they believe in it as the best form of government which they know, at all events to meet the conditions with which they have to deal. The system has been extended, wisely and properly extended, to South Africa, where the great mass of the population, its overwhelming majority, consists of indigenous Africans. But the introduction of responsible government in South Africa seems to have been only made possible by imposing on the indigenous population, in practice if not in theory, racial disabilities which could never have been

contemplated in India, which would not have been within the region of political possibility there. This illustrates the danger of applying to any country political precedents drawn from another. In the British self-governing dominions responsible government, the thing as well as the name, is at home. In India it is an exotic. It cannot be expected to live and grow there unless and until it is acclimatised. How can it be acclimatised in India? That was among the problems which confronted the framers of the new Indian constitution. One difficulty, an admitted and a fundamental difficulty, stared them in the face. Responsible government in British self-governing dominions means a removable government, a government which can be removed and replaced when it ceases to retain the confidence of the elected members of the legislature. But could the existence of any Indian government be made dependent on the vote of the legislature? The method adopted by the framers of the Indian constitution for surmounting or circumventing the difficulty was very ingenious. We cannot, they said, make the executive of any provincial government dependent on the vote of the legislature, and we will not attempt to do so. We will not apply the new system

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to the central government, to the Government of India. But we will apply it to the governments of all the more important provinces, and the mode in which we will apply it is this. In each province the domain of government shall be partitioned into two fields. One of these fields shall continue to be administered by the Governor in Council, that is to say by the Governor acting with the advice and assistance of his nominated executive council. The other field shall be placed under the administration of the Governor acting with ministers appointed under the Act. And these ministers are to be appointed from among the elected members of the legislative council. Thus, not the whole government, but certain members of the government, will hold office subject to removal in pursuance of a hostile vote of expression of no confidence in the legislature. The subjects handed over to the administration of the Governor in Council are called in the Act reserved subjects. Those placed under the administration of the Governor with his ministers are called transferred subjects. In relation to transferred subjects, says the Act, the Governor shall be guided by the advice of the ministers unless he sees sufficient cause to dissent from their opinion, in which case

he may require action to be taken otherwise than in accordance with that advice.

Will this ingenious compromise between responsible and irresponsible government work? An impossible scheme, said the critics, an unworkable scheme! There will inevitably be a conflict between the two halves of the government, and the result will be a deadlock. But that was not the opinion of the judicious and experienced men who sat on the joint committee of the two Houses of Parliament to which the Act went after it had been read a second time in the House of Commons. "The scheme," said the Joint Committee in their report, "has evoked apprehensions which are not unnatural in view of its novelty. But the Committee, after the most careful consideration of all suggested alternatives, are of opinion that it is the best way of giving effect to the spirit of the declared policy of His Majesty's Government." The Committee thought it desirable to state the theory on which the scheme was based, and they stated it in the following words:

"Ministers who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted

to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand, in and for that field of government in which Parliament continues to hold him responsible, the provincial Governor in Council will remain equipped with the sure and certain power of fulfilling that responsibility. The Committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his executive council their administrative experience, to the joint wisdom of the government.



• But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other ;  
• neither will control nor impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them ; and they will be given adequate power to fulfil their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor in Council, and he must possess unfailing means for the discharge of his duties.”<sup>1</sup>

In the later paragraph foreshadowed by the words which I have read, the Committee attempt to visualise the new scheme, and to give a picture of the way in which they think it could and should be worked.

“ There will be many matters of administrative business, as in all countries, which can be disposed of departmentally ; but there will remain a large category of business,

<sup>1</sup> Joint Committee Report, para. 5.

of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the executive council and the ministers, sitting under the chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects ; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the government, that decision, in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration ; and it will equally be

his duty to see that a decision arrived at on one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.”<sup>1</sup>

That is how the matter stands at present. The Joint Committee in their Report have expressed a clear opinion that the scheme now embodied in the new Act is not only desirable but feasible. The advantage of the scheme over the alternatives proposed by high authorities in India is its elasticity. If and where the list of transferred subjects is considered to be too small it can be increased; if and where it is too large it can be reduced. Whether and how the scheme will work, time will show.

The truth, I suppose, is that there is no constitution, however carefully and ingeniously framed, which cannot be made unworkable by an impracticable and sufficiently obstinate minority; there is hardly any which cannot be made to work with a sufficient amount of goodwill. I should be the last person to speak disrespectfully of the constitution of the United States. It is rigid, and is not free from the defects natural to rigid constitutions. But it has sometimes

<sup>1</sup> Joint Committee Report, p. 6, note on clause 6 of Bill.

shown a surprising amount of ductility and flexibility. The new Indian constitution is not rigid. It is eminently flexible.

The method which I have attempted to describe has become widely known as dyarchy; and about the name a few words may be said. The name is sometimes used opprobriously, as indicating something which might have been discovered in Gulliver's island of Laputa; sometimes descriptively, as in Mr. Lionel Curtis's recent book. It is a neologism in political literature, but it is not a novelty in the English language. Bishop Thirlwall, when writing his history of Greece, applied it to the government of Sparta by two kings. But it is still so much of a neologism that there are differences of opinion about the proper way of spelling it. Bishop Thirlwall spelt the first syllable with an "i"; but its spelling with a "y," dyarchy, seems to be coming more into vogue now. However it is spelt, it simply means dual government, and it might have been applied without inaccuracy to the old system of governing India, partly by the Crown and partly by the East India Company.

To controversialists the term "dyarchy" has done yeoman's service as a "bogy." In time, people will probably realise that the

scheme so devised is only one of the many devices which have been tried, in England and elsewhere, for keeping the executive government in touch with an elected legislature. None of these devices has proved quite satisfactory. All of them have been uncertain in their operation. It may well be that this particular device will operate in a fashion different from and simpler than that anticipated by the Joint Committee.

Whatever may be thought about the feasibility or expediency of this method of applying to India the principle of responsible government, there is no doubt that any attempt to apply that principle to India is a grave, and to many a startling, innovation. The authors of the Montagu-Chelmsford Report, who advocated the new departure, did not disguise or minimise its gravity, or the risks which it may involve. The announcement of 1917, they say at the beginning of the Report, pledges the British Government to the adoption of a new policy towards three hundred millions of people. "We need not," they go on to say, "dwell upon the colossal nature of the enterprise, or on the immense issues of welfare or misery which hang upon its success or failure."

It is not surprising that men of authority

and experience in India should have viewed with alarm the adoption of a policy so much in conflict with the honourable traditions in which they had been brought up. In British India, some of them said, the ruling class are Englishmen, trying as best they can to govern a distant country, inhabited by foreigners, with widely different habits, customs, traditions, and standards of life. The system of government which was established in British India before 1919 had earned the admiration of the whole civilised world. It had been modified from time to time, no doubt wisely modified. The people of India, the natives of the country, had been given an increasing share in the administration of their country, increasing opportunities for influencing and controlling the government. But in essentials the system had been one of absolute government, administered by an experienced, intelligent, and impartial bureaucracy. Now this system was to be changed, changed not in detail, but in principle. How could the new departure be justified? To what causes was the introduction of the new system due?

The answer usually given to these questions contains, not perhaps the whole truth, but a very substantial part of the truth. The answer is that the great war which began in

1914 had made the trial of a new and admittedly hazardous experiment in India not merely justifiable, but unavoidable. It was a European war, but its reverberations and repercussions had extended over the whole of the inhabited world. It was a European war, but it was a war in which Indians had played an honourable and invaluable part. It had brought thousands of Indians for thousands of miles from their tropical homes to shiver and die in northern trenches. The stories of their sufferings and exploits had become household words throughout the whole of India. The war had breathed a new spirit into Indians and had filled them with new aspirations which could not be ignored. The problem of Indian government had been fundamentally changed. The war had not merely forced the pace, it had changed the conditions of the problem.

People still talk glibly about the unchanging East and treat the expression as embodying a truism. Is it not rather what Coleridge would have called a falsism? Is the East unchanging? Has it ever been unchanging? The East was the birthplace of the greatest religions of the world. Did their birth and growth leave the East unchanged? Did the conquests of Alexander leave Asia un-

changed? Did the hurricanes of war and destruction which are associated with such names as Jenghiz Khan leave Asia as it had been before them? Or, to take a modern instance, is the Japan of to-day the same as the Japan of fifty years ago? No, the East is always changing, and in India as elsewhere the problem of the statesman is to adapt old institutions to new conditions. What is true, and it is a truth of which the Indian administrator and the framers of constitutions for India can never afford to lose sight, is that the traditional elements of society are of greater permanence in India than in most parts of the modern world, and that consequently political and social innovations are less easy to carry out there, and are viewed with greater repugnance and alarm. But to acknowledge this is very far from saying that India does not change. India does change, often and rapidly. And in a rapidly changing world the most dangerous attitude to assume is often that of standing still.

I have spoken of the new constitution for India as an elastic constitution. It owes its elasticity mainly to an extensive use of what has sometimes been called delegated legislation, legislation not directly by Parliament, but by rules and orders made under an



authority given by Parliament. Ever since Parliament has taken to legislating for India, this method has been extensively adopted in dealing with Indian subjects, far more extensively than most people would consider prudent or desirable or wise for home consumption. The reasons for adopting it are obvious, and among them are the impossibility of enabling or persuading Parliament to afford the time necessary for the consideration of Indian details, and the importance of enabling alterations to be made without the passage of an amending Act. Nowhere has the policy of giving and using delegated power been carried farther than in the Act of 1919. That Act contains forty-seven sections and several schedules, and, when printed in the form in which separate Acts of Parliament are usually printed, occupies less than fifty pages. The rules made under the Act are conveniently collected in a handy little octavo volume, published by the Stationery Office, and occupy nearly three hundred closely printed pages of that volume.

The subjects with which the rules deal are of great variety and importance. There is an electoral code, running to nearly a hundred and fifty pages, and containing rules for the election of the provincial legislative councils,

and of the central Indian legislature, consisting of the Legislative Assembly and the Council of State. Then there are the rules of business for provincial legislative councils and the Indian legislature, the devolution rules showing the extent to which and the mode in which powers of the central legislature are devolved upon the provincial or local legislatures, rules about the borrowing powers of local or provincial governments, and about many other matters.

One feels much tempted to touch upon the contents of some of these rules, such as the provisions of the electoral rules for the representation of different interests and classes by means of what are called communal electorates. These provisions present features of great novelty and interest, but to refer to them now would be to anticipate a topic which probably ought to be reserved for a later stage.

Mr. Montagu, speaking as Secretary of State for India, told the House of Commons that when he was at the India Office in 1917 he found, both there and in India, a general agreement in principle on the necessity for decentralisation and devolution, in particular for relaxing the control of the India Office over the Government of India, and for relaxing

the control of the Government of India over the local governments. In the Act of 1919, as in ordinary official phraseology, local governments and local legislatures mean the same thing as provincial governments and provincial legislatures. For our present purposes perhaps it would be more convenient to use the word "provincial" as indicating that in India the province is the most important local unit, both for administration and for legislation.

The agreement about decentralisation and devolution was general, but it was only an agreement on principle. The details had still to be worked out, and they were worked out later by committees, such as the so-called Functions and Franchise committees which sat in India under the chairmanship of Lord Southborough, and Lord Crewe's committee on the India Office which sat in England. It is upon the recommendations of those committees that the Act of 1919 is based. As to the order of proceeding, it was felt that the beginning ought to be made with the provincial governments and legislatures. This accounts for the first chapter of the new Act being devoted to Local Governments. And it was strongly felt in some quarters that more powers ought not to be devolved upon the

provincial governments, more independence ought not to be given them, unless they were vitalised by increasing their representative and popular character. Unless this were done the devolution would be merely a substitution of one bureaucracy for another. Of this feeling Mr. Montagu was an emphatic exponent. He spoke in the House of Commons about government by dispatch—that is to say, by correspondence between India and the India Office, for in this context dispatch does not mean celerity, but its reverse; and he said: “The only possible substitute for government by dispatch is government by vote. The only possible way of really achieving devolution and making the unit, when you have chosen the unit, responsible for the management of its own affairs, is to make the government of that unit responsible to the representatives of the people. If you simply say, ‘Let us have an irresponsible government in a province, and let the Government of India not interfere, and the Secretary of State not interfere, and Parliament not interfere,’ you have a policy which is merely the enthronement of bureaucracy and the very negation of the progressive construction of responsible government.”

In these preliminary remarks I have been

trying to trace very roughly the sequence of thoughts, opinions, and events which led up to the new departure foreshadowed in the announcement of 1917, and embodied in the Act of 1919. What was, for administrative purposes, the India of 1917 and 1919? An English Act of Parliament, the Interpretation Act of 1886, defines both India and British India. The object of the Act of 1886 was to express in more general and convenient terms the most important of the special definitions which had occurred in previous Acts of Parliament, and thus to make the language of future Acts more uniform. I was the draughtsman of the Act, and I consulted my old friend, the late Sir Alfred Lyall, about the Indian definitions. We agreed to define "British India" as meaning "all countries and places within Her Majesty's dominions which are for the time being governed by Her Majesty through any governor or other official subordinate to the Governor-General of India." And we agreed to define "India" as meaning "British India together with any territories of any ruler, prince, or chief under the sovereignty of Her Majesty exercised through the Governor-General of India or through any governor or other official subordinate to the Governor-

General of India." We wanted to find some word indicating a kind of authority not quite amounting to sovereignty, the kind of authority which Sir Henry Maine sometimes described as semi-sovereignty. And we could think of nothing better than "suzerainty," little dreaming, either of us, that the word was in a few years to become the watchword of an acrimonious controversy in South Africa.

It was at one time the fashion to speak of the Indian native states as our Indian protectorate. The relation between the British provinces of India and the rulers of the native states in India soon superseded, for purposes of international law, the old-fashioned model supplied by the protectorate of the Ionian islands, and the term "protectorate," in the Indian sense, was extended to Africa, with very remarkable results. It is the declaration of an English protectorate over Egypt that lies at the root of our present difficulties in that country. Many have been the repercussions, political and linguistic, between India and Africa.

It is, however, with British India, not with India in the wider sense, that the Act of 1919 is concerned, and I must reserve for later lectures what I have to say, first about provincial government and then about central

government in India. In this first lecture my first object has been to touch on some of the factors which brought about the introduction of a new policy for the government of India.

It is sometimes asked what justification there is for treating India, whether in the narrower or in the wider sense, as a single country, or its inhabitants as a single people. The answer is that the inhabitants of India are a congeries of peoples, differing from each other in race, religion, and traditions, and in the stages of civilisation which they have reached, but brought into unity under British superintendence. Such sense of unity and nationality as exists is largely of British creation. But it is there, it is probably growing, and no statesman can afford to ignore it. In a recent lecture delivered within these walls, Sir William Meyer, the High Commissioner for India—and who could speak with greater authority, knowledge, or experience?—said that he looked forward to a future of India as a great self-governing unit within the British dominions. I have tried to state fairly and fully the objections which have been urged against the new policy of 1917 and 1919. But I must not be treated as admitting the force of these objections, and I desire to express respectfully my agreement

with Sir William Meyer's optimistic view. So far as my imperfect knowledge of existing Indian conditions entitles me to express an opinion, that opinion is that the new policy was sound, and was not only bold, but wise, in the interests both of the people of India and of the British Empire as a whole. A continuance of the previous policy had become impossible, a new departure was inevitable. The object of the new departure, the end in view, was government with the consent and co-operation of the people governed. About this there is general, perhaps universal, agreement. But about the best means of achieving that object and of reaching that end there is room for legitimate difference of opinion. It may be that the form of responsible government adopted in the self-governing dominions of the Empire is not suitable to the conditions and requirements of India. It may be that those conditions and requirements demand a different form of government. This also time will show. The new constitution for India is at present in a provisional, transitional, experimental stage. Its introduction was a grave experiment, but it was a necessary experiment, and it ought to be watched in a spirit of patience, sympathy, and hope.



## LECTURE II

### THE PROVINCIAL GOVERNMENTS

THE subject on which I have to lecture to-day is the system of Provincial Government in India, and I am afraid that I shall have to inflict on you a rather dry and technical discourse. But I will ask you to remember two things : (1) Constitutional Law is a dry subject ; and (2) the endeavour to avoid, to steer clear of, the more controversial aspects of a topic does not tend to make the topic more juicy.

British India, as described in the Montagu-Chelmsford Report of April 1918, was then made up of nine major provinces and six lesser charges. The nine major provinces were the three presidencies of Madras, Bombay, and Bengal, the four lieutenant-governorships of the United Provinces, the Punjab, Burma, and Bihar and Orissa (Bihar and Orissa being a single province), and the two chief commissionerships of the Central Provinces and Assam. The six minor charges were the

North-West Frontier Province, British Baluchistan, Coorg, Ajmer, the Andamans, and Delhi. The three presidencies come first, first in rank and in historical interest. They had grown out of the old trading settlements, and each of them was under a Governor in Council. The lieutenant-governorships of the United Provinces and the Punjab had been carved out of the overgrown Bengal Presidency. Lower Burma had been formed into a chief commissionership in 1862, and, after Upper Burma had been added to it in 1886, the province of Burma became a lieutenant-governorship in 1897. Bihar and Orissa as a single province was a later creation. A lieutenant-governor was not then aided by an executive council, but was soon to have one. A chief commissioner was theoretically a delegate of the Governor-General in Council for the administration of a territory taken under his immediate management in pursuance of powers given by an Act of 1894, but in practice there was little difference between the position of a chief commissioner of Assam or of the Central Provinces, and the position of a lieutenant-governor. The North-West Frontier Province and British Baluchistan were frontier provinces, held and administered mainly for military purposes. Delhi obtained

recognition as a separate unit of local government when the seat of the central government was transferred to it from Calcutta. The Andamans were a penal settlement.

Above and controlling all the local governments were, in England, the Secretary of State and his Council, closely responsible to Parliament, and, in India, the Governor-General and his Council, commonly called the Government of India.

Now the scheme of the Act of 1919 was to place the more important of these provinces in the same kind of position as the three old presidencies, to place each of them under a Governor in Council, and to call them "governors' provinces." But the scheme left out of its scope the important province of Burma. The reason was that an influential school of thought held that Burma did not properly form part of British India, ought to be severed from it, and placed in a position similar to that occupied by the Straits Settlements and Ceylon. This view prevailed both when the 1919 Bill was introduced, and when it was under consideration by the joint committee of the two Houses of Parliament. But subsequently, by an executive order, for which the Act of 1919 gave statutory authority, Burma was placed in the same, or sub-

stantially the same, position as a governor's province under the Act of 1919. The results are somewhat puzzling to students of the new Indian constitution. They will find that Burma is left out of the Act of 1919; they will find reference to it in the statutory rules made under that Act, and, if they have time to peruse the pages of *Hansard*, they will find that proposals to amend the Act of 1919 by extending it to Burma were made, but subsequently dropped. Whether those whose views prevailed in 1919 had at their back any important body of opinion in Burma itself, and how far the adoption of those views would have been welcomed by an overburdened Colonial Office, are questions about which I do not know enough to express any opinion.

The Act of 1919 has remodelled both the executive governments and the legislatures of the Indian provinces. In so doing it adopts, with modifications, the recommendations made by the Southborough Committees which sat in India. The opening section of the first part of the Act regulates the relation between the central government and the local or provincial governments. It indicates the principles on which powers, duties, and responsibilities are to be devolved from the

central government to the provincial governments, and leaves the extent and conditions of the devolution to be settled by statutory rules. It distinguishes between central subjects and provincial subjects, and again between those provincial subjects which are to be treated as reserved subjects and those which are to be treated as transferred subjects. The first section of the Act runs as follows :

1.—(1) Provision may be made by rules under the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916 (which Act, as so amended, is in this Act referred to as “the principal Act ”)—

- (a) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and the Indian legislature ;
- (b) for the devolution of authority in respect of provincial subjects to local governments, and for the allocation of revenues or other moneys to those governments ;
- (c) for the use under the authority of the Governor-General in Council of the agency of local governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency ; and

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(d) for the transfer from among the provincial subjects of subjects (in this Act referred to as "transferred subjects") to the administration of the governor acting with ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

- (i) regulate the extent and conditions of such devolution, allocation, and transfer ;
- (ii) provide for fixing the contributions payable by local governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys ;
- (iii) provide for constituting a finance department in any province, and regulating the functions of that department ;
- (iv) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein ;
- (v) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred ; and
- (vi) make such consequential and supplemental provisions as appear necessary or expedient :

Provided that, without prejudice to any general power of revoking or altering rules under the principal Act, the

rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

\* \* \* \* \*

(4) The expressions "central subjects" and "provincial subjects" as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as "reserved subjects."

Let me note one or two points in connection with these provisions. The rules made in pursuance of the powers given by the section are collected under the head of "devolution rules" in the little volume published by the Stationery Office to which I referred in my last lecture. They are of the highest importance, and no one who wishes to understand the mode in which powers, duties, and responsibilities are distributed in the new constitution between the central authority in India and the provincial authorities can afford to dispense with a careful study of them. The rules and the schedules attached to them enumerate forty-seven subjects which are to be classified as central, and fifty-two subjects which are to be classified as provincial. The rules and schedules must be read together, and in connection with the provisions of the

Act under which they are made, and therefore are subject to numerous exceptions and qualifications. A fruitful field, you may be disposed to say, for profitable litigation, profitable to the lawyer and expensive to the tax-payer. But the lawyer must not be too sanguine in his expectation of profits from this field, for everything has been done in the Act and rules to withdraw from litigation the questions arising under them, and to provide for their settlement by administrative action. Consider the wide latitude of administrative action allowed by the important section which I read to you just now,<sup>1</sup> and one of the rules, headed "settlement of doubts," lays down that :

"When any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council shall decide whether the matter does or does not relate, and his decision shall be final."

The authority devolved by the new constitution on provincial governments in respect of subjects classified as provincial, and the allocation to those governments of specific sources of revenue, emancipate the local

<sup>1</sup> 9 & 10 Geo. V., c. 101 (3).



governments largely from the parental tutelage under which they had previously lived, and make it possible for them to exercise borrowing powers on their own account. Such borrowing powers are accordingly given by a later section. Where the provincial governments act merely as agents for the central government in respect of subjects classified as central, their independence is naturally less, and the authority delegated to them may be withdrawn or modified as circumstances seem to require.

The Act expressly recognises the system of dual government or dyarchy on which I touched in my last lecture. Where there is council government, as will be the case in all the more important provinces, the Governor in Council will deal with "reserved subjects," but "transferred subjects" are handed over to the governor acting with ministers appointed under the Act, i.e. appointed from among elected members of the legislative council. The position of these ministers and the relations between the two halves of the government are regulated by later sections of the Act (ss. 4, 6). The Act requires that the administrative control exercised by the central government over provincial subjects shall be less in the case of trans-

ferred subjects than in the case of reserved subjects.

The constitution of the executive councils for the more important provinces, governors' provinces as they are called in the Act, is much the same as that of the executive councils for the three presidencies before the passing of the Act. The maximum number of members of the executive council remains four, but only one of these, instead of two, need have had twelve years' previous service under the Crown in India. The joint committee of the two Houses of Parliament had proposed that the executive council should consist of two ordinary members, one a European qualified by long official experience, the other an Indian. But this proposal was not provided for in the Act because it was thought undesirable to require by statute any racial qualification or to impose by statute any racial disqualification. Subject to the maximum of four, the number of the council and the proportion between Europeans and Indians will be settled by practice. But it is, I understand, contemplated that in any event the executive councils of the provinces will continue to include at least one Indian member, and that, if a second European member is added, there will also

be a second Indian member. The old statutory provision that if the Commander-in-Chief happens to reside in Calcutta, Madras, or Bombay he is to be an additional member of the executive council for the province had become obsolete and is dropped.

This is as much as need now be said about the composition of the provincial executive councils. In the composition and functions of the provincial legislatures the new constitution makes important and drastic changes. The legislative council for every province is to consist of the members of the executive council, and of members either elected or nominated. Of the members of each council not more than 20 per cent. are to be official members, and at least 70 per cent. are to be elected members. A schedule to the Act fixes the number of each council, and it will be seen that the number of each council is much greater than that of the old legislative councils even after they had been enlarged under Lord Morley's Act of 1909. For instance, under Lord Morley's Act the maximum number of the Bengal, Madras, Bombay, and the United Provinces legislative councils was 50. Compare this with the numbers shown in the schedule to the new Act (Sched. I, p. 33) :

" Madras . . . . .	118
Bombay . . . . .	111
Bengal . . . . .	125
United Provinces . . . . .	118
Punjab . . . . .	83
Bihar and Orissa . . . . .	98
Central Provinces . . . . .	70
Assam . . . . .	53 "

And even these numbers may be increased by statutory rule, provided that the statutory proportion between official and elected members is maintained.

Not merely in fixing numbers, but in other important points large powers are left to be exercised by statutory rules. Subsection 4 of s. 7 says :

" (4) Subject as aforesaid, provision may be made by rules under the principal Act as to—

" (a) the term of office of nominated members of governors' legislative councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise ; and

" (b) the conditions under which and the manner in which persons may be nominated as members of

governors' legislative councils ;  
and

" (c) the qualification of electors, the constitution of constituencies, and the method of election for governors' legislative councils, including the number of members to be elected by communal and other electorates, and any matters incidental or ancillary thereto ; and

" (d) the qualifications for being and for being nominated or elected a member of any such council ;  
and

" (e) the final decision of doubts or disputes as to the validity of any election ; and

" (f) the manner in which the rules are to be carried into effect ;

" Provided that rules as to any such matters as aforesaid may provide for delegating to the local government such powers as may be specified in the rules of making subsidiary regulations affecting the same matters."

The mode in which these large delegated powers have been exercised is shown by the little volume of rules under the 1919 Act, especially by those grouped as "electoral rules." Lord Morley's Act of 1909, and the regulations under it, had provided for the

representation of special interests, partly by nomination, partly by election. Elected members were returned by constituencies such as local municipalities, district and local boards, universities, chambers of commerce, and trade associations, and also by groups of persons such as landholders or tea-planters.

Mohammedans had also succeeded in obtaining separate representation. The legislation of 1919, the Act of that year as supplemented by statutory rules, carries a great deal farther the representation of special interests, and for that purpose relies more on election than on nomination. The extremely ingenious electoral rules under the new Act will have to encounter the objections so often urged against the methods and devices of proportional representation, that their machinery is liable to be captured and misused by unscrupulous and self-seeking political wirepullers. They must meet these objections as best they may, and it will be borne in mind that similar objections may be and have been urged against the adoption of similar methods in almost every part of the civilised world. The objections against communal electorates and other methods of securing protection for minorities are frankly recognised by the Montagu-Chelmsford Report as having to be

considered and weighed by all who hold that government ought to be based on popular representation. Autocratic government, whether by an individual or a bureaucracy, can always claim the merit of simplicity. With the perils which it involves all the world is familiar.

- Those who are interested in constitutional experiments could with great advantage study the code of electoral rules under the Act of 1919, and might be advised to begin their study by taking some part of British India with which they happen to be specially acquainted and seeing how the rules are applied there. For instance, a student might begin with the Bengal rules, and the schedules attached to them, and discover what is meant by general constituencies and by special constituencies, such as the landholders' constituency or the commerce and industry constituency. He will find that, while an elector who has the qualification of a voter in special constituencies may exercise the vote for as many constituencies of that class as he is qualified for, he can only vote in one "general constituency," and even in that constituency his vote must be given by him, not as a citizen, but in some special capacity, such as that of non-Mohammedan, Moham-

medan, European, or Anglo-Indian. To the objections which may be urged against this method of voting, on the ground that it tends to obscure the common citizenship which ought to be the basis of a political franchise, and to continue and stereotype class distinctions and religious distinctions which ought to be removed or minimised, full justice has been done in the pages of the Montagu-Chelmsford Report. But it must be acknowledged that the problem before the Franchise Committee which sat in India, and on the recommendations of which the electoral rules were based, was of extraordinary difficulty, and every credit ought to be given to the industry and ingenuity of those by whom the rules were compiled. The task of devising an electoral franchise adaptable and suitable to the infinitely varying needs and conditions of a vast population like that of India might well baffle the most experienced, ingenious, and courageous of constitution makers.

The legislative councils of the provinces have grown from being modest expansions of the governor's executive council into being large assemblies of legislators. This growth has necessitated a change in their relation to the governor. He formerly presided in person at meetings of the legislative council. He is



no longer a member of the legislative council, but he has the right of addressing the council and may for that purpose require the attendance of its members. He has been withdrawn into a convenient Olympian height from which he can watch and control, so far as seems advisable or possible, the proceedings of the legislature. The duty of presiding at meetings of the legislative council is now performed by a president, who is in the first instance appointed by the governor, but will in future be elected by the legislative council, subject to the governor's approval. Both the president and the deputy president draw salaries, fixed by the governor for the first president, and in other cases by the council itself.

The object of the new constitution is twofold :

1. To emancipate the local governments and legislatures from central control.
2. To advance, by successive stages, in the direction of conferring responsible government on the provinces.

The first of these two tasks is easier than the second, and you will see that considerable steps towards accomplishing it are made by the first part of the new Act.

Section 10 of the Act deals with the legis-

lative powers of the new councils. It limits the number of cases in which previous sanction of the Governor-General is required for provincial Bills, and at the same time makes the statutory list of those cases complete, so as to avoid continuance of the previous practice under which Bills not included in the list had to be submitted for previous sanction under "executive order." Absence of previous sanction cannot be made a ground for attacking the validity of a Bill which has received the Governor-General's assent. Consequently, legislative power may be distributed between the central government and the provincial legislatures without risk of the validity of provincial Acts being challenged in the courts of law.

An important section of the Act (s. II) deals with business and procedure in the legislative council of a province. It declares expressly that, subject to rules and standing orders affecting the council, there shall be freedom of speech in the council, and that no person shall be liable to any proceedings in any court by reason of his speech or vote in the council, or by reason of anything contained in any official report of the proceedings of the council.

The general scheme of the Act is to give

the legislative council large powers of control both over finance and over general legislation, but at the same time to arm the executive government with the power of obtaining such money and the passage of such laws as are necessary for the proper administration of the province. The annual appropriations of money are submitted to the votes of the council in the form of demands for grants. If the council refuses assent to a demand relating to what is called a reserved subject, and the governor certifies that the expenditure is essential to the discharge of his responsibility for the subject of the expenditure, the Governor in Council has power to meet the expenditure notwithstanding the refusal. If the demand relates to a transferred subject the assent of the council is required, but the governor can nevertheless in cases of emergency authorise expenditure which in his opinion is necessary for the safety or tranquillity of the province, or in carrying on the administration of any department. Thus the governor can provide funds for any unforeseen emergency, and also, in the last resort, prevent a transferred department from being temporarily closed down on account of refusal of supplies. In accordance with British parliamentary practice and the

precedents followed in British self-governing dominions, a proposal for the appropriation of provincial revenues or for incurring any expenditure under a resolution cannot be made except on the recommendation of the governor. The special powers with which the executive government is armed extend not only to the expenditure of money, but also to the passage of Acts. If the council refuses or fails to pass a Bill relating to a "reserved subject," the governor may certify that the passage of the Bill is essential to the discharge of his responsibility, and thereupon the necessary Bill becomes an Act on signature by the governor. The Act so signed is expressed to be made by the governor, is sent to the Governor-General in Council, is reserved by him for the signification of His Majesty's pleasure, and when assent to it is given by the King in Council and notified to the Governor-General the Act becomes law and has the same force and effect as if it had been passed by the local legislature and had obtained the necessary assent. An Act made by a governor under this exceptional power must be laid before each House of the British Parliament in such a way that either House will have an opportunity of expressing an opinion upon it. Of course it is presumed

that recourse will not be had to this exceptional method of legislation until all means of obtaining the requisite legislation in the ordinary way have been exhausted.

I have inflicted on you to-day a dry and technical discourse, and I fear that I may have exhausted your patience and power of attention. But the subject-matter is complicated and technical, and cannot be safely described in popular language. The new constitution for India is open to the criticism that some of its provisions, though extremely ingenious, are too complex to be easily workable. I have sometimes thought that a well-known dictum of Lord Bacon might with advantage be borne in mind by those who frame constitutions, political or commercial. Lord Bacon says in his *Novum Organum*, "Subtilitas naturæ subtilitatem sensus et intellectus multis partibus superat." However subtle and ingenious the craftsman who frames a constitutional or legal instrument may be, he is pretty sure to find that he has failed to provide for all possible contingencies. Therefore he is ordinarily well advised in employing, as far as possible, simple and general language. As far as possible, for of course there are many cases in which specific provision is indispensable.

New constitutions have a disconcerting habit of working in ways neither intended nor expected by their authors. Constitution making is a fascinating pursuit, but the framers of constitutions must be prepared for disappointments and disillusion. The ingenious constitution framed by the Abbé Sieyès was diverted, or perverted, by the genius of Napoleon to uses very remote from the Abbé's desires or intentions. The South American constitutions devised by Jeremy Bentham hardly survived their emergence from the study in which they were conceived.

He would be a bold man who would venture to predict the particular ways in which the new Indian constitution will work or fail to work. Fortunately it is exceptionally elastic, admits of easy amendment, and is admirably adapted for the trial of experiments. Therefore we have every ground for hope and confident expectation that the trial of this great experiment will not be impeded by technical difficulties.

## LECTURE III

### THE CENTRAL GOVERNMENT

UNDER the new constitution for India the main differences between the provincial governments and the central government are two :

1. The bicameral system, the system of having two chambers of the legislature, is applied to the central government. The central legislature consists of two chambers—the Council of State and the Legislative Assembly.

2. The system of dual government or dyarchy is not applied to the central government.

Before 1919 the central executive government of India consisted of the Governor-General and his executive council, the central legislature consisted of the Governor-General in his legislative council. The new Act alters the constitution of both these bodies and the relation of the executive government to the legislature.

The reforms under Lord Morley's Act of 1909, often described as the Morley-Minto reforms, undoubtedly fell short of the requirements of 1919, but it is worth while to recall what they did, as showing how far they advanced in the direction pursued by the legislation of ten years later.

What change did the Morley-Minto reforms make in the central government of India? They increased the maximum number of members of the legislative council who were not members of the Governor-General's executive council from sixteen to sixty. In remodelling the constitution of the legislative council they expressly recognised the principle of election which had been latent in the regulations under the earlier Act of 1892. The Act of 1909 required that members of the legislative council should include elected as well as nominated members. The elected members were chosen by special constituencies of the same kind as those which I described in my last lecture as choosing elected members of provincial councils. They made the central legislative council consist of a single chamber, with an official majority in a total membership of sixty-nine members, of whom twenty-seven were elected. They materially enlarged the functions of the



central legislature. Under the Act of 1892 there had been power to discuss the annual financial statement and to ask questions, but no power to move resolutions nor to divide the council upon them. The resolutions, if carried, operated merely as recommendations to the executive government, recommendations on which the government might or might not act. They extended the right of putting questions by permitting supplementary questions, subject to disallowance by the President. That is as far as Lord Morley or Lord Minto went in 1909, and they expressly disclaimed any intention or desire to advance farther in the direction of parliamentary or responsible government. But, as often happens, events were stronger than reformers, and the goal which was emphatically disclaimed in 1909 was as emphatically and authoritatively announced in 1917.

We are now in a position to consider the changes made in the central government by the new constitution as embodied in Part II of the Act of 1919, and the rules made under it. The most important change in the central legislature is its division into two chambers—the Council of State and the Legislative Assembly. The constitution of this legislature

was radically altered in the course of the passage of the 1919 measure through Parliament. Under the Bill of that year as introduced in the House of Commons, the Council of State was a device for passing measures which could not be got through the Legislative Assembly. But the joint committee on the Bill held strong views on the utility of second chambers, and, in accordance with their recommendations, the Council of State became, to use the language of their report, a "true second chamber." Thus India has added to the long list of second-chamber experiments. A Bill is not to be deemed to have been passed by the Indian legislature unless it has been agreed to by both chambers, either without amendment or with agreed amendments. Provision is made for a joint sitting of both chambers. As in the constitution of the provincial legislatures, the Governor-General is not a member of either chamber, but has the right of addressing it, and may for that purpose require the attendance of its members.

Each chamber has a president. The president of the Council of State is appointed by the Governor-General from among the members of the Council. The Governor-General can also appoint other persons to

preside in such circumstances as he may desire. The president of the Legislative Assembly is, for the first four years, appointed by the Governor-General, and is to be afterwards a member of the assembly, elected by the assembly, and approved by the Governor-General. The assembly has also, from the beginning, a deputy president, elected by the assembly, and approved by the Governor-General. Both the president and the deputy president draw salaries. The salary of an appointed president is fixed by the Governor-General, that of an elected president or of the deputy president is fixed by an Act of the Indian legislature. Both the Council of State and the Legislative Assembly consist of members nominated or elected in accordance with statutory rules. The number of members of the Council of State is not to exceed sixty, and of these not more than twenty are to be official members.

The total number of members of the Legislative Assembly is to be a hundred and forty, one hundred elected and forty nominated. Of the forty nominated members twenty-six must be official members. There is a limited power to increase, by statutory rule, the number of members, and to vary the proportion between the classes to which

they belong. The life of the Council of State continues for five years, that of the Legislative Assembly for three years. But the Governor-General may dissolve either chamber, or, in special circumstances, extend its life. After a dissolution the interval before the next session of the chamber is fixed by law.

The Governor-General appoints the times and places for holding the sessions of either chamber of the Indian legislature, and may prorogue their sessions. Every member of the Governor-General's executive council must be nominated a member either of the Council of State or of the Legislative Assembly. He cannot be a member of both chambers, but, if he is appointed to one of them, he is entitled to attend and address the other.

As in the provincial constitutions, much is left to statutory rules. Thus under s. 23 provision may be made by rules as to

“(a) the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise ; and

“(b) the conditions under which and the

manner in which persons may be nominated as members of the Council of State or the Legislative Assembly ; and

“(c) the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary thereto ; and

“(d) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly ; and

“(e) the final decision of doubts or disputes as to the validity of an election ; and

“(f) the manner in which the rules are to be carried into effect.”

Again under the following section (s. 24) :

“ Provision may be made by rules under the principal Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the legislative assembly in the absence of the president and the deputy president ; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.”

The statutory rules may be supplemented by standing orders, and there is the same provision about the freedom of speech as in Part I of the Act, the part which deals with provincial legislatures.

The new constitution enlarges enormously the fiscal powers of the Indian legislature. It will be remembered that under the Morley-Minto constitution all that the central legislature could do (apart from its purely legislative functions) was to discuss the annual financial statement, to ask questions, and to make recommendations to the government. Now under section 25 of the 1919 Act the supplies are to be voted in the form of demands for grants. It is true that an important field of expenditure is tabooed for discussion. Let me read you the language of the section (s. 25) :

“ 1. The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

“ 2. No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

“ 3. The proposals of the Governor-General in Council for the appropriation of

revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the legislative assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

- “ (i) interest and sinking fund charges on loans ; and
- “ (ii) expenditure of which the amount is prescribed by or under any law ; and
- “ (iii) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and
- “ (iv) salaries of chief commissioners and judicial commissioners ; and
- “ (v) expenditure classified by the order of the Governor-General in Council as—
  - “ (a) ecclesiastical ;
  - “ (b) political ;
  - “ (c) defence.

“ 4. If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

“ 5. The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of

expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demands for grants.

"6. The legislative assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

"7. The demands as voted by the legislative assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the legislative assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to by the legislative assembly.

"8. Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof."

The proceedings of the central legislature in India are now reported in a convenient octavo form, modelled on the official report of proceedings of the parliament at Westminster, and the pages of the Indian *Hansard* throw much light on the working of



the new constitution. Specially instructive are the reports of the Indian budget debates in the present year. They were conducted under the restrictions imposed by the Act of 1919 and the rules and orders made under it. It was at one time thought that the action of the Governor-General might relax those restrictions, but the advice given by the English law officers of the Crown did not confirm that view, and it is now clear that the restrictions cannot be removed or relaxed except by amendment of the statute. The Governor-General exercised his statutory power by directing that special heads of expenditure should be open to discussion when the financial statement presented by the Government was under consideration. Accordingly a general discussion of the budget was held in each chamber and preceded the discussion of particular demands. In the Legislative Assembly the general preliminary discussion lasted two days, and, by the help of a time-limit on speeches, was brought to a conclusion within that time. The range of discussion at each stage of the budget debate was limited by statute, and the limitations thus imposed raised several knotty points of order and procedure which had to be determined by the president of each chamber.

Fortunately the two presidents found themselves equal to the arduous task of interpreting the new rules of procedure and determining how far parliamentary analogies were applicable and should be applied. The president of the Legislative Assembly had the advantage of being an experienced parliamentary hand, for he had been a member of the British House of Commons, and had made himself familiar with its practice and procedure. The criticisms of the legislature on government expenditure sometimes followed the lines of debates, or orations, in the Indian National Congress. But one was also sometimes reminded of House of Commons comments and criticisms, especially at times when a Chancellor of the Exchequer has had to present an unpopular budget. A deep substratum of human nature underlies the differences between East and West.

Another pair of sections (ss. 26 and 27) make provision for the still more difficult cases of failure to pass necessary legislation. These provisions follow the same lines as the provision made for similar cases when arising in the provincial legislatures; and, when default is made by the central legislature, the Governor-General can, like the provincial governor, make an Act which, if approved in

England, has the same effect as an Act passed by the Indian legislature.

The new Act deals not only with the central legislature, but also with the composition of the Governor-General's executive council. But the alterations made in the composition of that council are not so important as the provisions made for reconstituting the composition and procedure of the legislature. Under the law as it stood before 1919 the number of ordinary members of the Governor-General's executive council was limited to six, and was in fact six. That statutory limit is now removed. There were also extraordinary members, such as the Commander-in-Chief. The qualifications for the post of legal member of council, the post which I once held, are altered. Formerly the legal member had to be an English barrister or Scottish advocate of five years' standing. Now his standing must be ten years, and a pleader of the Indian High Court of ten years' standing is also qualified for the post. The provision that when a provincial executive council assembled in a province having a governor, the governor was to be an extraordinary member of that council was repealed by the Act of 1919 as obsolete. A similar provision for the Governor-General's executive

council is by Part II of the Act also repealed. Therefore when the Governor-General's executive council sits at Simla the governor of the Punjab is no longer a member of the council.

The Governor-General may at his discretion appoint, from among the members of the Indian Legislative Assembly, council secretaries, whose business is to assist the members of his executive council, and who draw such salaries as may be provided by the Indian legislature. This provision follows a similar provision in the part of the Act which deals with provincial governors.

I have tried to summarise very briefly, and I fear too technically, the leading provisions to be found in the first two parts of the Act of 1919, under the heading of Local Government, that is to say the Indian Provincial Governments, and the Government of India, that is to say the Central Government of India in India. But I am compelled, perhaps by bad arrangement on my part, to leave untouched the very important provisions made by the later portions of the Act. For instance, I have said nothing about Part III of the Act, which deals with what, from the London point of view, may be called the Home Government of India. This part changes the relations of the Secretary to the

Parliament which sits at Westminster, remodels the constitution and procedure of the Council of India, relaxes the control of the India Office over authorities in India, and sets up a new office, the holder of which is charged with important functions, and styled the High Commissioner for India.

- The transfer of certain Indian expenses from the revenue of India to money voted by Parliament increases the possible control of Parliament over Indian affairs. Indian questions can now be discussed on the Vote for the Secretary of State's salary, instead of being reserved for the belated and often unsatisfactory debate which used to take place on the motion for going into Committee on East Indian Revenues. But it is to be hoped that the augmented power of asking questions about, and discussing, the proceedings of governments and officials in India will be exercised in the future, as it has been in the past, with discretion and reserve. Indeed, having regard to the increased powers, duties, and responsibilities of the Indian Governments, it ought, on sound constitutional principles, to be exercised with even greater discretion and reserve. There are many other statutory provisions, knowledge of which is essential to an understanding of

the new Indian Constitution, but I must reluctantly leave them to be dealt with on some future occasion, and perhaps by another hand.

Part IV of the Act of 1919 deals with the Civil Services in India. Its provisions are based on recommendations made by the Government of India, in their dispatch of March 5, 1919; by the Committee which sat in India and is commonly referred to as the Functions Committee; and by the Joint Select Committee of the two Houses of Parliament in the Report which was printed by order of the House of Commons on November 17, 1919. In order to give effect to the principles laid down in the Joint Report as to safeguarding the position of public servants, the Act reduces to statutory form the main rights and duties of the services in India, and contains provisions specifically saving existing rights, and supplying means of redress to officers whose position is prejudicially affected. I understand that under the rules made for classification of services, three main divisions have been recognised: All-India services, provincial, and subordinate; that members of All-India services will continue, as at present, to be appointed by the Secretary of State in

Council; and that the same authority will have power to regulate the conditions of their service and will alone have power to dismiss them. It is, I also understand, contemplated that pensions for provincial services will be secured by legislation to be passed in the Indian legislature, that power to make rules relating to the provincial and subordinate services will be delegated to local governments, and that eventually local legislation will regulate these services by Public Service Acts. The Act of 1919 provides for the establishment in India of a Public Services Commission, which is to discharge in regard to recruitment and control of the Public Services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council. This commission offers interesting analogies to the Civil Service Commission which has recently been set up in Canada. But I have not had an opportunity of studying the rules made under Part IV of the Act, and do not even know how far they have been made and published, and when they take effect. Therefore I speak on this subject with very great reserve.

I should, however, like to take this opportunity of saying a very few words, not about the Civil Services in India as a whole, nor

about the Indian Civil Service in its narrower sense, but about the English members of the Indian Civil Service. It has been my fortune to have hovered on the borders of two great services, the English Civil Service and the Indian Civil Service, and there was sometimes speculative doubt on which side of the border I ought to be placed. I am old enough to remember the introduction of the competitive system for admission into the Indian Civil Service, and the plentiful crop of gloomy predictions and prognostications which it brought forth. Afterwards, when I was in India, among my colleagues and intimate friends were men who had been sent out to India by John Company, and men who had been sent out later as Competition Wallahs, and I carried away with me from India feelings of deep affection and admiration for members of each class. When I returned from India I succeeded Sir Henry Maine as examiner of candidates for the Indian Civil Service in the subjects of law and jurisprudence, and in that capacity made acquaintance with representatives of many generations of Indian civilians. I have watched with constant interest their subsequent career. Lord Meston, who presides over our meeting to-day, went out to India before,



but not long before, my return from that country, and thus I missed the honour of counting him among the very eminent men whose acquaintance I first made across an examination table.

My Indian experiences lead me to take a more hopeful view of the position and prospects of English officials in India than prevails in some quarters. A period of transition from one system of government to another is always difficult, but the difficulties are such as my countrymen have usually had the capacity and courage to surmount. The old regime of "jo hookum" is doomed; the element of force, which is indispensable to the existence of all forms of government, must remain, but will, it is hoped, be kept, as prudent governments keep it, as much as possible in the background. There will be more scope for government by personal influence and persuasion. But have Englishmen, as a rule, shown themselves wanting in the qualities required for that form of government? Is it not more congenial to them, might not its exercise be more attractive to them, than the life of a bureaucrat? There are other questions which seem to need impartial and considered answers. We all regret and deplore the recent indications that

there may be some falling off in the recruitment of English officials for India. But to what causes ought that falling off to be attributed? How far are the causes permanent, how far are they temporary? How far are they due to apprehensions about the effect of the new system of government on English officials in India, how far to economic causes which are operating far beyond India? Again, what real foundation is there for the statement freely made that Civil Servants in India have failed and are failing to receive from the Government the support to which every servant of the Crown is entitled for the proper performance of his duties? The answers to these questions are at present obscured by a murky atmosphere of acute and bitter controversies, and for that reason alone the questions demand as careful and impartial investigation as can be given to them. Facts are coloured by individual and class opinions, prepossessions, prejudices. This is only what human nature leads one to expect.

You will see that my attitude to many of these questions is critical and sceptical, as becomes a seeker after truth with only an imperfect knowledge of the facts. I am sceptical about the accuracy of predictions

confidently made, sceptical about the ascription of causes to phenomena. But my scepticism is hopeful scepticism, hopeful because I retain a belief in the capacity of individuals and communities, Eastern and Western, to surmount difficulties which for the moment seem insuperable. A hopeful sceptic I am, and a hopeful sceptic I desire to remain.



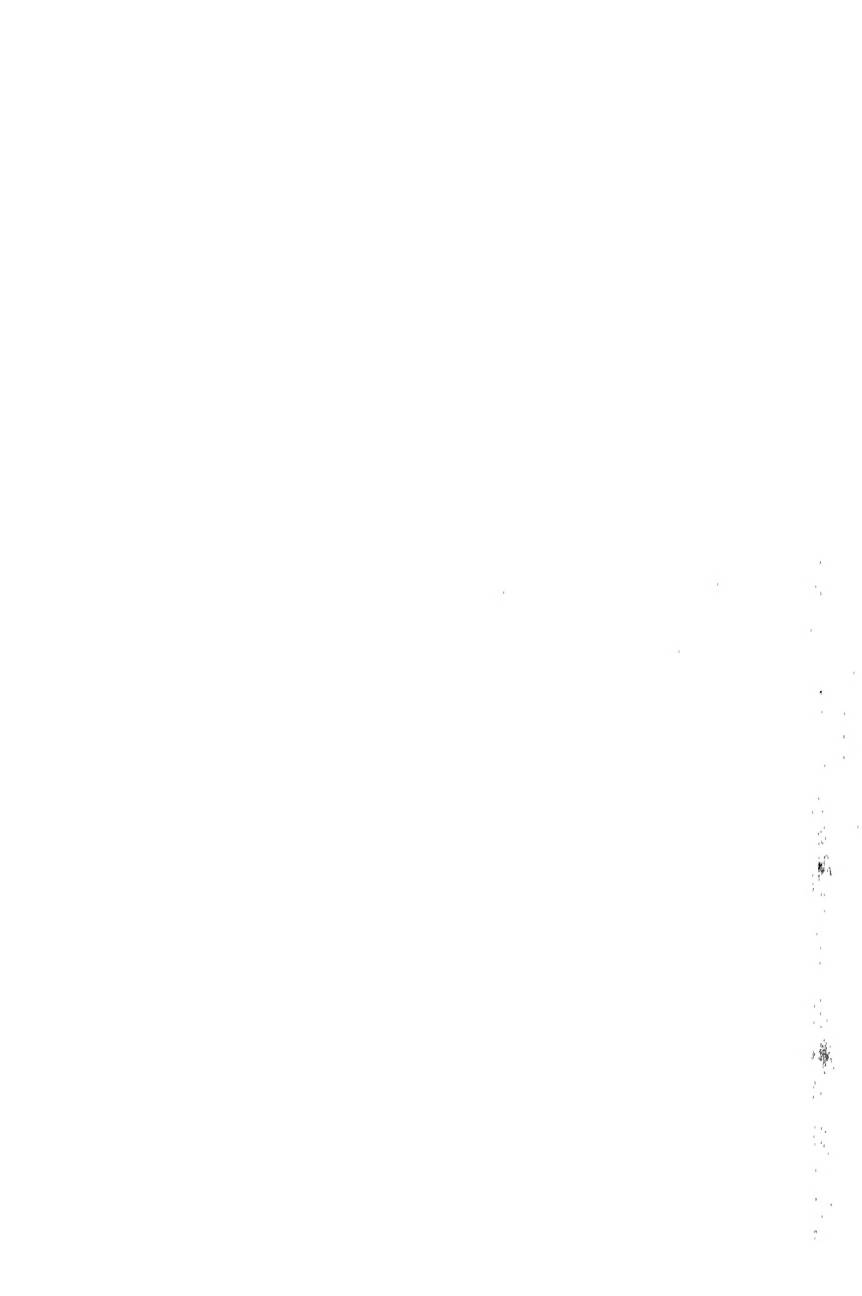
LECTURES BY  
RT. HON. LORD MESTON

FORMING

LECTURE IV: *The Genesis and Principles of the  
Constitution*

LECTURE V: *Its Working*

LECTURE VI: *Its Outlook*



## LECTURE IV

### THE GENESIS AND PRINCIPLES OF THE CONSTITUTION

A NEW Constitution interests the student of human nature no less than the student of human institutions. To the latter it appeals as a stage in social evolution ; to the former as a monument of man's aspirations or follies. It may possibly have been this consideration which induced the University College to announce a second set of lectures on the recently granted Constitution in India so soon after the same subject had been handled by the greatest living authority upon its jural aspect. Lecturing here in March, Sir Courtenay Ilbert<sup>1</sup> analysed the legislative basis of the new form of government, and explained how it gives effect to the intentions of Parliament and of those who advised Parliament in framing the Constitution. He described the machine which has now been erected and he

<sup>1</sup> The lectures were actually delivered by Mrs. H. A. L. Fisher, owing to the illness of her father.

told how it differs from the plant which it replaces. What I propose to attempt is to supplement Sir Courtenay's narrative by sketching how the old machinery of Indian administration evolved, why changes in it were necessary, why the new plant is of this particular pattern, how it is worked and by whom, what are the dangers inherent in it and the safeguards against them, and finally what is the raw human material on which it has to operate. In this endeavour it will be for you to forgive me if I wander farther from the purely legal bearings of the case than would ordinarily be permissible in lectures delivered under the ægis of the Faculty of Law. My apology would be that for a full understanding of constitutional forms the lawyer must often dip into political history and national idiosyncrasies; in other words, he studies human nature as well as human institutions.

Regarded as a prelude to the present situation, the political history of India, during what may be termed the British period, is divisible into four stages. Divisible, in the exact sense, it may not be, any more than you can measure off the stretches of a great river which flows slowly on, picking up tributaries here and throwing out backwaters there,



yet ever broadening as it moves. But the four stages appear to me to correspond roughly with changes of public opinion in England about our responsibilities for India—a public opinion which unfortunately is not based on progressive knowledge of Indian conditions, but has had to adjust itself hastily at long intervals to developments it had not suspected.

The first stage runs from the time when the East India Company first assumed territorial sovereignty in 1765 until they were finally divested of their trading functions by the Charter Act of 1833. During those seventy years the area of the Company's jurisdiction rapidly extended, without any correlative widening of their duties to the races who came under their sway. Between business and philanthropy the clearest line was drawn, and the scope of the latter was strictly confined. Order was enforced, and measures were taken against the worst forms of misrule: but the native dynasties were maintained, indigenous codes and forms of law were respected, and the religious and social usages of the people were left scrupulously alone. Whatever momentum remained in the administrative system of the Moguls ran on and ran steadily down: while the

Company stood by in an attitude of negative benevolence.

With the second period came a clearer recognition of the duties of sovereignty. Shadows of coming change had been cast before by the growing light of the evangelical and humanitarian influences in the English public opinion of Wilberforce's and Bentham's days. Christian missionaries, who had obtained their formal passport into India by an Act of 1813, were already leavening life and thought. Education in the same year, 1813, had been for the first time endowed, even if only to an extent which now seems microscopic, by an annual grant of £10,000. The vernacular press had been born in 1818. The stage was set for what Macaulay, in one of his longest speeches in the House of Commons, thus described: "We have to engraft on despotism those blessings which are the natural fruits of liberty." And this is what the Company and Parliament between them now proceeded to do. Their first demonstration was the Charter Act of 1833, which organised the provinces, consolidated the legislative powers of the Indian Government, and introduced a period of administrative efficiency and progress. Simultaneously, the Governor-General of the day, Lord

William Cavendish-Bentinck, was vigorously assailing the former attitude of *laissez-faire* and carrying reform into many departments of India's life. Our ideals of law, education, public health, and administrative methods were pressed upon the people with increasing fervour and, through the period which I am discussing, with increasing disregard of whether the people liked the insistence or not. The impact of Western civilisation, with its accuracy and promptitude and thoroughness in sharp contrast to the traditional methods of the East, was not to be a process of slow natural penetration. For there must be no delay, we believed, if we were to be true to our charge—the “stupendous process,” as Macaulay described it in the speech from which I have already quoted, “the reconstruction of a decomposed society.” It must be superimposition, not penetration; and what India itself wished became less and less important. In that long campaign of efficiency, unselfishness and high ideals were our armour: and I know of no literature more attractive, in its own stilted solemn fashion, than the records in which the English administrators of those days—names long forgotten by the outer world—reasoned out, from first principles, the application of the

canons of justice and economic truth to the confusing conditions of India. In building up a new India on foundations borrowed from Western civilisation, there was no attempt to carry the people with us, or to enlist them in the ranks of social reform. So few there were who showed any anxiety to share our task, so little education existed or public spirit, that we lost the habit of consulting, or even of looking for, leaders of Indian opinion. Two other causes operated in the same direction. One was the apparent absorption of the acutest Indian minds in religious, rather than political, reform, and in establishing sects which aimed at purifying the Hindu faith. The other was the stunning blow of the Mutiny, and the disquiet subsequently caused by the Wahabi movement. Neither on Hindus nor on Mohammedans, did it seem, could we rely for disinterested co-operation in the task we had undertaken ; and our only course was to carry on without them, and to argue out our policy over their heads. The attitude of mind thus formed was to remain with us long after the justification for it had passed away.

For the third stage, Lord Ripon's viceroyalty (1880-4) is a convenient starting-point. Tentatively, it is true, and with much

dilution of its formulæ, the reactions of Gladstonian liberalism had touched a chord in India ; and free institutions began to shape themselves in men's minds. Sentiment was fired by the dispatch of Indian troops to fight for us in Egypt, and by the warm reception given by the Viceroy to aspirations which, before his coming, had hardly been voiced. Two consequences directly ensued. On the one hand, an organised school of political reformers came out into the open : the National Congress was founded in 1885. On the other hand, representatives of the people were called in to the Councils of the Government. The former movement progressed with vastly greater rapidity than the latter. Each succeeding year brought louder insistence on India's right to share in her own administration, and generated fresh supporting grievances against the methods of autocracy. The appointment of an extra Indian member here and there to the small official legislative bodies was but a halting response, especially as the elective principle was steadfastly refused. This period thus advanced to its culmination under Lord Curzon, along three parallel lines—steady improvement in the machinery of the official government, a slow and reluctant admission of Indian influ-

ence in its working, and a growing feeling among the educated classes that the blessings of liberty were not being—and could not be—effectively grafted upon the tree of despotism.

The fourth stage of the developments which have led up to the present situation was ushered in by an outbreak of spasmodic revolutionary crime. Ascribed sometimes to Japan's victory over Russia, sometimes to certain of Lord Curzon's administrative reforms, the emotional outburst of physical violence which marked the early years of Lord Minto's viceroyalty had roots far deeper than any connection with those events. To discuss them would be beside my present purpose. All that is relevant for the moment is the effect which the movement had in awakening this country to the existence of a Nationalist spirit. The new Secretary of State, that eminent political philosopher, Lord Morley, was ready to recognise it. The new Viceroy, though neither a politician nor a philosopher, had plenty of quiet practical shrewdness. He knew when there was anything seriously wrong with either a horse or a man, and he was quite clear that something must be done to cure it. The obvious dangers of the discontent which was surging through India left the local authorities with no option

but to advise at least an instalment of self-government. This was embodied in the Act of 1909, which instituted the form of legislature known as the Morley-Minto Councils. They were bodies very much larger than the old legislative councils, in which a handful of officials and two or three complaisant Indian gentlemen sat round a table and read manuscript speeches in turn. From those bodies they differed also in their powers and in their composition. They were allowed to ask questions with little restriction ; they could discuss the Budget ; they could move resolutions, raise questions of order, and divide the Chamber. In the central legislature, though greatly enlarged, an official majority was retained, in order to secure immunity against the risks of experiment in the body ultimately responsible for the legislation and finance of India. In the provincial governments, however, that safeguard was abandoned ; and the benches were filled with a combination of officials, non-officials nominated by the Governor, and elected representatives of various interests. There was no majority of officials : but *per contra* there was no majority of elected members, and the provincial Governor could usually arrange his nominations so as to secure the requisite

number of friendly votes. In spite of this and of the fact that the elected members were returned not by a direct vote but by intermediate electoral colleges such as municipal boards, chambers of commerce, associations of landowners, and universities, the new scheme was received with a chorus of approval and gratitude by Indian publicists.

For the disillusionment which followed, it would be churlish now to allocate blame. The Government of India have been accused of framing regulations under the Act which frustrated the generous intentions of the measure itself. This charge, however, ignores Lord Morley's own and very definite disclaimer of the parliamentary principle. He certainly cannot have meant the scheme to do more than it did. If he in turn is rebuked for thus compromising with the essentials of self-government, it must be remembered how difficult he would have found it to carry more radical changes against a suspicious and ill-informed public opinion here. So that the Morley-Minto reforms, with all their defects, went probably as far as was possible in a time of transition, and indeed served their purpose by bringing to a speedy issue the real constitutional problem.

What the Morley-Minto scheme did, at its



best, was to familiarise an increasing number of intelligent Indians with administrative questions. It provided them, through the right of interpellation, with facts which had previously been unavailable. It enabled them, by moving resolutions, to put the official world on its defence, and to elicit principles and motives for action which had previously been taken for granted. And it gave them, if they combined reasonableness with pertinacity in a discreet ratio, a considerable influence in the conduct of affairs. What the scheme did, at its worst, was to establish debating societies in which the official members had to vote one way to support their prestige and the elected members had to vote the other way for the sake of opposition. There was much unreality in the business. The budget was sacrosanct, and legislature could rarely, if ever, be passed in the teeth of the government. Resolutions on policy had no binding effect and the government could in no way be turned out. Hence much futile disputation, growing impatience, an endless faculty for irresponsible criticism, and a tendency to satirise the official executive for everything that went either right or wrong. With the lean results of constitutional progress were contrasted the

successes of unconstitutional agitations in the west, e.g. by the suffragettes and in Ireland ; and the arena which it had been hoped the new Councils would provide was deserted for the livelier forum of the National Congress and the Moslem League. The cry became insistent, first for Dominion self-government and then for home rule.

When the war broke out, the clamour was stilled for a time ; but as the conflict dragged on, the fear grew that England would change into a great military nation with a leaning to martial methods, and the Indian politician decided to challenge us to extend to India the principles of liberty and self-determination which we were asserting for other countries against Germany. At the end of 1916 came an event of much significance. The National Congress and the Moslem League, hitherto kept apart by racial antipathies and divergent political ideals, met at Lucknow in the same week, within a mile of each other, and adopted a common platform of constitutional reform. Hardly less clamant than theirs, though never heard by the public, was another voice, that of the British official in India, pressing his Majesty's government for guidance in a situation of growing difficulty. Beating incessantly against him in

his daily round, in the handling of his district or his province, was the real issue—what is the goal of our policy in India? Are we to hold it indefinitely and if necessary by force? Or are we deliberately to qualify Indians to hold it for themselves? During those anxious years of war it was of no avail for us to fence with those questions, to point to the general trend of all our past work and our professions; a specific answer was demanded by the Nationalists. The older-fashioned people, whose instinct was to support us, were being equally embarrassed; and in the absence of a lead from us, their active loyalty was being severely tried. The air seemed heavy with imminent trouble, unless an authoritative pronouncement could be obtained as to India's future. Such a promise was at last made in August 1917. You are familiar with its purport, the establishment by measurable stages of a system of government by the people themselves. With it my prelude ends. The policy of grafting on despotism the fruits of liberty had run its course.

From 1916, and even earlier, the ground is strewn with the debris of draft constitutions. Likewise with labels for abortive schemes—self-government, dominion status, home rule,

*Swaraj*. Out of the welter had emerged the imperative need for a new constitutional principle. The last announcement of policy by the British Parliament had been Lord Morley's: and the principle embodied therein, whatever it was, had broken down. The legislatures were not founded on the people's will. They could criticise and even influence the executive, but they could not control it; and to give them control now over an executive which was answerable only to the Secretary of State was impossible. A new and more logical principle was called for; and thus the keynote of the new regime was its assertion of the principle of responsibility. The word is not used in the ethical sense in which, for example, England is responsible for the welfare of India—that is to say, morally accountable to the tribunal of its own conscience. It is used in the technical sense in which an executive government is responsible to a legislature and the members of a legislature are individually responsible to the constituencies by which they are respectively elected. This import of the word is familiar to you all. If the executive dissatisfies the legislature, it is removed, usually by being refused the laws or the supplies it requires. If a legislator dissatisfies his con-

stituents, he is not re-elected. Thus in the last resort an executive which displeases the people can be removed by the people. This principle, so axiomatic with us, is new to India. Yet it was Responsible Government which his Majesty's government promised in 1917: and the weighty discussions which proceeded from then continuously until the new constitution was enacted in December 1919 were mainly directed at considering how far, and by what method, responsible government, if it could not be conferred *per saltum*, was capable of introduction by stages; whether, in other words, autocracy and democracy could be made to walk hand in hand, until democracy should learn its paces and could be trusted to walk alone. It was a question of unexampled difficulty.

I have said that the democratic principle of responsibility was a novelty in India. For a similar statement three years ago I was taken to task by Mrs. Annie Besant, who enlarged on free states and free cities in the past, on Maine's eulogy of the village community, on municipal government as a gift from the East to the West, and on the elective methods of caste government. I should not weary you by examining these speculations, even if I were qualified to do so. Caste

disputes, it is true, are referred in many cases to popular assemblies, though in a very haphazard fashion ; and the village community goes on, all the world over, under almost any form of state polity. There are also traces of isolated republican states in ancient India : but they seem to have disappeared before the Christian era. And certainly during the period of conscious history there is neither record of democratic institutions nor tradition of elective government. Hindu life was regulated by only two authorities, the Raja and the Brahman, Church and State being equally autocratic. Mohammedan life, thoroughly democratic though it is on its religious side, has long been habituated to military absolutism in public affairs. To bring the democratic principle in the everyday business of administration down to the masses, was now the problem. Here lay the inherent difficulty of translating into practice the policy of August 1917. Let us see how it was tackled (*a*) by the Indian protagonists of reform, (*b*) by the British officials, insistent on caution, and (*c*) in the historic report, signed by Mr. Montagu and Lord Chelmsford, on which Parliament ultimately acted.

First for the platform on which the political leaders of Hinduism and Islam united at

Christmas 1916. It is set out in a series of propositions, of which I summarise the most important. The Secretary of State to have his London Council abolished, and to stand to the Government of India in the same relation as the Secretary of State for the Colonies does to the self-governing Dominions. The Government of India to consist of the Viceroy, with an executive council, of whom half the members shall be Indians elected by the legislature for five years, and the other half shall be appointed by the Crown, but not Civil Servants. In the central legislature, four-fifths of the members to be elected; Bills to be subject to the veto of the Crown; resolutions to be subject to the veto of the Viceroy, but to be binding if passed again after a year's interval; military affairs and foreign politics to be at the discretion of the executive; but the Budget and all financial provisions to depend on the vote of the legislature. In each province the Governor to have an executive council, of whom half the members shall be Indians elected by the legislature for five years; neither the Governor nor his appointed councillors to be Civil servants. The provincial legislature to have four-fifths of its members elected "directly by the people on as broad a franchise as pos-

sible." The provisions for Bills, resolutions, and the Budget similar to those for the central legislature. Mohammedans to have separate electorates and a definite ratio, varying by provinces, of the elective seats in each provincial legislature. The provinces to be autonomous, but to make contributions to the central revenues.

To the framers of this draft the difficulties of responsibility, as you will have already perceived, were clearly insuperable. The whole important question of the franchise they dismissed, in the provinces with a vague phrase, in the central legislature with an ambiguity which I have not attempted to elucidate. So much for the responsibility of the legislatures to the people ; regarding that of the executive to the legislature, the scheme is even more elusive. The legislature is given complete control of policy. It makes the laws, gives or withholds supplies, and even enforces its resolutions, being in this respect more potent than our British Parliament. As its agent for executing its policy, it has a government, partly of its own choice and partly independent, but wholly irremovable. The Governor and his council, when once the Indian members have been elected for their term of five years, will be responsible to no-



body, if the stipulations about autonomy mean anything, or to the Parliament of Great Britain if they do not.

Had deadlock and confusion been the objective, they could not be more confidently ensured than by such an arrangement. The truth is that the Nationalists had never given much thought to the will of the masses and how it is to prevail, or to the actual conduct of administrative business. Their prime anxiety—and not unnaturally—had been to get control of policy and to secure a larger proportion of Indians in place and power. Possessing already a good system of administration, they assumed its continuance as an automatic instrument ; and as for the *aura popularis*, they had no apprehension that it would ever embarrass the comparative handful of educated men who will monopolise political authority for the next generation or two. But the result was that a scheme such as the National Congress and the Moslem League adopted would have been neither democracy nor liberty. It lacked entirely that chain of constitutional responsibility which is of the essence of both.

Let us turn, in the second place, to the contributions made by the British officials, with their outside knowledge of the Indian

character and their experience of practical administration. At the outset, during the long and secret confabulations which took place under Lord Hardinge, they devoted themselves to projects for removing racial grievances and ministering to the growing self-respect of Indian Nationalism. More liberty in municipal affairs, the enrolment of Indian volunteers, the abolition of indentured Indian labour in the Colonies, the right to carry arms, and so forth, were urged as necessary reforms. But when it came to political machinery, the absence of any declared policy by Parliament paralysed initiative. The best that was offered was some tinkering-up of the Morley-Minto scheme ; and even as late as the earlier months of Lord Chelmsford's Viceroyalty, proposals were made to the then Secretary of State (Mr. Austen Chamberlain) which, though meant to be liberal and progressive, would only have exaggerated the defects of that exhausted experiment. When at last a decisive policy was announced in 1917, the future began to be explored on wholly different lines. From the public services in India enthusiasm could hardly be expected for the complete reconstruction of an edifice which they had spent generations in perfecting. But they are entitled in fair-

ness to credit for more altruistic motives. Faced with responsible government as the policy of the future, and searching for means of bringing it safely to birth, the conscientious Indian official reasoned in this manner : The great mass of the people is illiterate, and vastly ignorant and credulous. It will be many a year before the ballot-box means anything to them ; and in the meantime the idea of a political structure broad-based upon the people's will is moonshine. Nor is there any certainty that, while they are politically helpless, the people's interests will be best served by the lawyers and landlords who will at first fill the seats of power. We cannot count therefore on the theory of responsibility functioning in the wider issues affecting the people's welfare or over the extended area of a large province. And what of the only classes who can be called in to a share in the government ? They have shown themselves acute and often industrious critics ; but criticism is not the qualification needed for driving the heavy and delicate engine of Indian administration. They will be handicapped by racial differences and social entanglements. In their inexperience, and even with the best will in the world, they will make terrible mistakes and undo much that

the British rule has secured for the welfare of the people.

Arguing thus, the official advisers, with a few exceptions, played for caution. Their plea was for two essential preliminaries—the education of the electorate, and some training in practical administration for the political leaders. To many it seemed that an extension of the facilities for local self-government would provide the latter ; others were prepared to see parliamentary institutions established for certain departments of the administration and in areas smaller and more manageable than the existing provinces. Officials however had not the opportunities for conference and the concerting of schemes which are enjoyed by politicians ; and I cannot refer you to any single agreed project as embodying their views and their cautions. Such a project was indeed formulated by a meeting of the heads of the provinces while Mr. Montagu was in Delhi ; but I fancy that the seal of official secrecy still rests upon it.

You have now before you some estimate of the materials on which Mr. Montagu and Lord Chelmsford, with their respective staffs of advisers, set to work to prepare their report to Parliament. There was at their disposal an enormous volume of written and spoken

opinions from all and sundry—gigantic tomes which will rest in peace till the white ant and the boreworm devour them, in the record-rooms at Delhi. But I have narrated enough to show you the genesis of the new Constitution. Our Government of India had steadily grown from the rôle of a cynical policeman to the position of an earthly providence. But the time came when the excellences of our rule could no longer be a complete justification for its wholly alien character. The very enforcement of our ideals had taught India to claim a share in the management of its own affairs. This claim we had met, tentatively and partially, to the extent of providing a small section of the English-speaking classes with occasions for studying and criticising our methods. But there had been no training in the combined duties of framing and executing policy ; and when the time came for conceding India's political claims, this lack of training made it clear that we could only abdicate by degrees as the Indian leaders showed their fitness to replace us. Simultaneously the absence of an intelligent electorate precluded us from the grant of that complete political liberty which we profess to believe can be wisely used for democracy alone. This in a nutshell was the

problem for which the Secretary of State and the Viceroy strove to find a solution in the winter of 1917-18. Their reply was contained in the report, dated April 22, 1918—a document of rare literary grace and human interest. The report was subsequently hammered out on the anvil of administrative feasibility by the Government of India and the provincial governments. It was then translated into a Bill and regulations; and these were subjected to a searching inquiry by a committee of both Houses of Parliament. Before the original *projet de loi* came on to the Statute Book, therefore, it was modified and altered in many ways: but the main principles survived, and it is only to them that I would invite your consideration, dismissing in a few words those changes in the old dispensation which, though of much import in themselves, involve no wide constitutional issue.

Among such lesser changes is the creation of a Governor and executive council in those provinces which were formerly under one-man rule. In each province half the members of the executive council are Indians appointed by the Crown in the same manner as their English colleagues; and incidentally I may here note that the same procedure applies to Indian gentlemen appointed to the Viceroy's

executive council. A point of some importance is involved, to which I shall return later. Next among the minor reforms is to be the transfer of the whole machine of local self-government, municipal and rural boards, to popular control. This can be effected under the existing laws, or such modifications of them as the provincial legislatures are themselves competent to enact. And finally perhaps I may mention the steady replacement, up to a fixed ratio, of English recruitment by the selection of Indians for the public services. This is being secured automatically by the hesitation of many young Englishmen to adopt an Indian career while the political sky continues to be overclouded as it is at present.

The three major constitutional changes remain for discussion. They are :

- (1) The Council of Princes ;
- (2) The bicameral legislature for the central government ; and
- (3) The dual government or dyarchy in the provinces.

For discussing the first of these, a convenient occasion will arise later. But you will see at once how impossible it would have been to leave the Indian States out of the purview of the new arrangements. They

occupy roughly a third of India. The largest of them is half as big again as Greece, with a population half as big again as that of Turkey ; the smallest of them is only a few acres of land : but between these extremes range a great variety of quasi-independent sovereignties, all deeply interested in the movements which stir British India. The conception of a chamber of ruling princes, by which they could be brought into touch with our policy and its problems, had long been mooted, and has now been realised. The chamber has of course no voice in the administration of our territories, and is confined ostensibly to matters of common interest to its own members and the areas over which they rule.

The second great change which results in the new central legislature was a compromise between two opposing arguments. On one side spoke the cautious mover, the brooder over foreign complications which may await a new Asiatic power, the British capitalist, and the industrial interests engaged in India. Experiment as you like, they said, in the provinces ; but keep the central government with authority unimpaired for the preservation of order within and without, and with its powers of prompt action unweakened by



dualism or any other untried device. On the other side argued the Nationalists. The policies which affect our well-being, they urged, and which accordingly we wish to influence, are hatched just as frequently by the central government as in the provinces. Railways mean as much to us as hospitals, and tariffs are as vital as industrial education. Therefore let us have a hand in directing the imperial as well as the provincial departments. Between those two views a *via media* was diligently sought. That some *via media* was necessary was impressed on the authors of the report by their belief that the position of the Secretary of State was to be materially modified, probably by the abolition of his council. This did not materialise ; but at one time it seemed near, and there was a feeling of awkwardness about altering the powers of the Secretary of State at one end and of the provincial governors at the other, and leaving the despotism of the Viceroy scatheless in the intermediate position. The course which was actually adopted discarded the idea of a dual executive, but attached to the Viceroy and his colleagues a legislature with a large elected majority and entrusted it with voting all heads of the Budget except those concerning defence and certain smaller charges.

In this way Indian opinion has its opportunity of influencing the policy of the central government. Controlling would indeed be the more correct expression, were it not that the Viceroy is armed with statutory powers to make a law which his legislature refuses to make, and to obtain funds which his legislature refuses to supply, if he is satisfied that such law or such funds are "essential to the discharge of his responsibilities," or, in an alternative and almost synonymous phrase, are "essential for the safety, tranquillity, or interests of British India or any part thereof." The second chamber, or Council of State, was intended to be a further safeguard. It is a small body, with a large infusion of official members, and such guarantees for sobriety in its elected members as a high franchise may be considered to offer in India. In a subsequent lecture I may attempt to examine how far these safeguards operate in the direction of maintaining the former authority of the central government.

It now remains to consider the new provincial system. It represents the supreme effort of Parliament, aided by many competent advisers, to reconcile the Nationalist claims with the difficulty of introducing democratic institutions into the least demo-

cratic country in the world. To speak in more precise terms, it provides the Indian leaders with an opportunity of learning the actual responsibilities of government by exercising them in a limited sphere: it furnishes the popular legislatures with a wide power to influence that realm of the administration for which the responsibility still rests with the old official government; and it ensures that the popular sphere shall be enlarged and the official realm correspondingly curtailed from time to time in accordance with the proved capacity of the popular leaders, and on the advice of periodical commissions of inquiry to be sent out by Parliament. The system has come to be known as "dyarchy," a term originally applied to it as a nickname, but so compact that it has remained as the accepted description, though "dualism" would be both more precise and less reminiscent of unfortunate historical associations.

In its mechanism and legal form, dyarchy was lucidly expounded by Sir Courtenay Ilbert in his lectures last term. He portrayed it from the point of view of a trained jurist watching it, as he said himself, from Westminster. May I try in this lecture and the next to hang below his picture a layman's sketch of how dyarchy appears to the ad-

ministrator actually working it at Madras or Lucknow ?

Its essential feature, as the name implies, is the division of the administrative work of the province into two fields. Let me, however, first make clear what is the scope of the provincial work. It excludes military matters ; foreign affairs ; tariffs and customs ; railways, posts, and telegraphs ; the income tax, currency, coinage, and the public debt ; commerce and shipping ; the civil and criminal law ; and a number of smaller subjects of which the administration cannot be conveniently localised. All these are under the control of the central government at Delhi. Every other ordinary duty of a government is within the provincial ambit. It is this sphere which is divided into two fields, and these fields are placed under the administrative direction of two separate and mutually independent committees of government. In one field are the " reserved " departments : justice ; police ; land taxes and tenures ; forests ; the irrigation system ; famine relief ; industrial matters ; finance ; and several others of less importance. These portfolios are held by the members of the Governor's executive council, who remain as before answerable for the proper conduct of their

business to the British Parliament through the Secretary of State. Whether Englishmen or Indians, these officials are appointed by the Crown, removable only by the Crown, and in no sense amenable to the directions or discipline of the provincial legislature. Their responsibility is ultimately to the British people. In the other field of the administration lie the "transferred" departments: municipal and rural self-government; public health, including hospitals and asylums; public works other than railways and canals; agriculture; excise; and various smaller matters. These portfolios are in the hands of Indian Ministers, who are chosen by the Governor from among the elected members of the legislature. They are answerable for the manner in which they discharge their duties, to the legislature; for if it shows that they have lost its confidence, it may be proper for the Governor to dismiss them and to appoint others in their place. Their responsibility thus lies ultimately to the people of the province.

Such are what, in familiar parlance, I have called the two committees of government; and such are the sources from which they derive their authority. In a sense the Governor is an *ex officio* member of each com-

mittee. In the executive council he presides, takes part in all their deliberations, possesses a casting vote, and is also endowed with a special power in rare emergencies of overruling his colleagues. He thus shares to the full their responsibility to the British Parliament for the proper administration of the reserved departments. With Ministers his position is different. By law he governs, "acting with Ministers," in the transferred departments. He acts on their advice, save when he has good reason for rejecting it ; and they hold office during his pleasure. That is the constitutional theory, closely analogous, as you will perceive, to the observance of the self-governing Dominions. In practice his duty is to guide and counsel and help them, to habituate them to responsibility, and thus to let them have their way unless he believes them to be grievously wrong. He does not share their responsibility in transferred subjects ; for technically what they are responsible for is the giving to him of advice which the legislature approves. In practice again their duties go farther than this, until they are indistinguishable from the duty of administering their departments subject to the moderating influence and experience of the Governor.

The dual functions thus outlined do not by

any means exhaust the obligations of the Governor. When an administrative question arises, as it constantly does, which concerns departments in different portfolios, it is for him to bring the two authorities together, to substitute consultation for conflict; and, where the matter in issue seems *prima facie* as germane to the one department as to the other, it is for him to decide in which department the decision shall be taken. Furthermore, when matters arise which are of such wide importance as to affect the work both of his executive council and of his Ministers, it is expected of him to convoke a joint meeting of the two committees, and in it to have the business thrashed out from every point of view. With all this, he has to be careful that there is no confusion of jurisdiction. Let an issue be debated by the full government or by any combination thereof, its final decision must always rest either with the executive council or with the Ministers, and by the decision the authority who made it must stand or fall. For this reason, although every order of the provincial authority purports to be an order of the government, the Governor has to ensure that it bears the sign manual of that particular half of his government which passed it.

*Vis-à-vis* the legislature, the two committees are in the same position. Each must defend its own policy, promote its own laws, seek its own supply. But the executive council, being responsible not to the legislature but to the Secretary of State, have in reserve the Governor's power of overruling the legislature if it is obdurately hostile. Ministers, on the other hand, being responsible to the legislature, must secure its assent to their policy without having any bludgeon up their sleeves ; and if they fail, it becomes a question with the Governor whether he ought to dismiss them or, in the alternative, dissolve the legislature in the endeavour to get the chain of responsibility revolving freely again.

These very briefly are the outstanding features of the dual or dyarchic system. Speaking recently in this College, Lord Chelmsford, one of its two sponsors, explained that he and Mr. Montagu had fought against dyarchy as long as they could, and had adopted it only by the elimination of all other possible alternatives. I do not know that any apology is needed for being guided by a process of elimination in finding the solution of a perfectly new problem. But dyarchy has positive merits of its own, and not merely negative or residuary virtues.



Precedents for it may be hard to find ; but are there many precedents for one nation handing over the civil administration of a great country to another nation, and being guided in the pace of the transfer by the transferee's success in its new task ? Dyarchy has been devised to meet those wholly novel conditions ; and the fact that it was not rashly or hastily adopted is all to the good. It must now have time to prove its value as a constitutional system. *Prima facie* it provides what was wanted—a training in the school of practical experience for those who claim administrative power, a means of gauging their capacity in the use of such power as they obtain and the maximum of protection to the people while their future rulers are serving their apprenticeship. The most serious theoretical argument against dyarchy is that administration is a seamless garment and cannot be divided. To this I will advert in my next lecture, when endeavouring to describe the practical application of the new system to Indian conditions.

One word in conclusion. Sir Courtenay Ilbert hesitated to say where the conception of dyarchy originated. The farthest back that I can trace it is to a group of students of the British Commonwealth, headed by Mr.

Lionel Curtis, who sat down with a few experts from the India Office in an Oxford Common-room, in the spring of 1916, to inquire "how self-government could be introduced and gradually and peaceably extended in India." The result of their symposium was a memorandum, drafted by Sir William Duke, in which the government of the province of Bengal is divided hypothetically into two parts and administered in close accord with the essential spirit of dyarchy as we know it to-day. It is a striking example of how by careful study and exact reasoning the germ of a far-reaching theory may be cultivated in our laboratories of constitutional science.

## LECTURE V

### ITS WORKING

IN considering what I may call the *vie intime* of government in India, one sees at once two important respects in which it will be changed by the new constitution. The first is the position of the District Officer. That official, known as the District Magistrate or the Collector or the Deputy Commissioner in different parts of India, needs no introduction to you. He was the best product of the Indian Civil Service, the pivot of the whole administration, and, if he was a good man, the father of his district as well, and the guide and confidant of his people. Practically all the public business of the district passed through his hands. He prevented the different public departments from clashing or overlapping. He was the channel through which the needs of the people reached the government and the legislature. He was the agent by which the policy of those bodies was interpreted, and often tempered and adapted,

to the people. No race of public servants in the Empire have done better or more humane work than the district officers in India.

But what they represented, though at its best, was paternal government. They were the necessary vehicle of a highly centralised administration. They stood for the strength and the benevolence of autocracy. With the new conditions this must change. So long as a field of the administration is reserved for the control of the official executive, the district officer will remain as now the local agent for its management. But, as regards the field transferred to the control of Ministers, his chief task will be to wean the people from appealing to him with their needs or protests in matters of policy, and to induce them to have recourse to their own representatives. In other words, he will have to teach them the value of the vote, and how to use it. It is difficult to conceive how, for a long time to come, the business of government is to be decently ordered without an official as the organising head of each district, or how law and order are to be preserved unless there is a chief magistrate in each district to enforce them. A capable man in such a position will still have much influence and power for good : but the old rôle of the district officer will

disappear as the people become familiar with the new principle of government.

A second big change which the new constitution will bring is a great extension of statute law. India is honeycombed with codes and manuals of public business, which repose not on legislative authority, but on executive fiat. Suffering as we so frequently do in this country from administrative anomalies and discomforts which it is impossible to get Parliament to find time to rectify, we can appreciate the advantage of an administrative system in which the defects are capable of being amended as they are discovered, without waiting for the scanty leisure of an overworked legislature impatient of departmental woes. There is the further advantage of elasticity, in the field that is opened for test and trial, and unchecked experiment towards greater efficiency. Dangers too there are in the method : but they were largely obviated by the personal element. Officialdom was a small and intimate hierarchy, with traditions of loyalty and little finesse, to whom instructions were ordinarily as binding as laws. Yet with all these merits, the system was only possible under autocracy ; and to the Indian reformer it has long been suspect as a symbol of absolutism. "Executive high-handed-

ness " is a constant slogan in the Nationalist press. As free institutions develop, prescriptions of law will multiply to replace it.

By way of illustration, let me refer briefly to the directions under which the land revenue or land tax is assessed. From the Moghul Empire we inherited the right to take from the peasantry for the State exchequer a share in the produce of all cultivable land, or a share of their rent-roll from such intermediary landlords as we found or, in certain provinces, created. In Moghul times this right was frequently exercised to the extent of leaving the cultivator only with sufficient margin for subsistence and the seed for his next harvest. By similar reasoning, a landlord would be allowed to retain only a commission on his rental collections. Such was the theory of land assessment to which we succeeded. It has been profoundly modified. The margin of profit left to the landlord, the ratio of his produce left to the cultivator, have been steadily increased ; for we believe that capital returning to the land will fructify it, and that agricultural efficiency rises with the agriculturist's standard of comfort. But there is nothing *in law* to prevent us going back, at the next settlement of the land revenue, and taking 80 per cent. of the produce or 90 per

cent. of the rents. Our whole system of assessment and rates of claim depend upon executive orders, and the jurisdiction of the ordinary courts is definitely barred out. The advance in economic wisdom which has characterised the land policy has not been the result of legislative decision, but of official enlightenment. To the ardent nationalist therefore its merits do not redeem the reproach of its origin : and the cry is loud for an Act which will embody the principles of assessment, and will be open to interpretation by the courts. The pitch of the land revenue will thus be subject to legislative revision, and its periodical fixation will become a legal process.

By these two instances I have attempted to exemplify the changes which will come over the spirit of administration under the new regime. It is now time to describe the actual working of the machinery.

The electorate need not detain us long. Out of the total male population<sup>1</sup> of British India about 11 per cent. are literate, and out of the total female population about 1 per cent. The ratio of literate males to the total population is thus under 6 per cent. With a very limited female franchise, and literacy

<sup>1</sup> I am working on the Census of 1911.

very often confined to the painful writing of one's own name, this figure of 6 per cent. would, according to the ordinary canons, be the outside limit to the number of intelligent voters. In effect the number of voters admitted to the provincial franchise is approximately  $5\frac{1}{3}$  millions or  $2\frac{1}{3}$  per cent. of the population of the eight provinces. Even this is the expression of a very low qualification. In one province, which we may take as typical, every person whose income is £13 6s. 8d., or whose house rent is £2 8s., or who cultivates land at a rental of £3 6s. 8d., or who owns land which pays revenue of half that amount, is eligible as a voter; and so is every retired officer, N.C.O., or soldier of the regular forces. It is thus clear, the conditions of Indian life being what they are, that we are yet a long way from democracy on the one hand, or any recognisable level of political intelligence on the other.

In the circumstances it is natural enough that the character of the electorate should have little relation to the class from which are drawn the candidates who seek their suffrages. For practical purposes that class does not go beyond the small section (0.6 per cent. of the population) who are literate in English. It is only they who can usefully follow the proceed-



ings of the councils, and it is only they who have seriously taken to Western political methods. Rural constituencies provide landed magnates with easy opportunities for election ; but the conflict between rural and urban interests, which some observers believe will create the party system of the future, has not yet become acute, and the majority of the elected legislators are townsmen of the professional classes.

Coming to the provincial legislature, I can best describe it by taking one exemplar province. It has a council of 121 members. Of these 60 are elected by Hindus, 29 by Moslems, 1 by Europeans, 6 by land holders, 3 by Chambers of Commerce, and 1 by a University, or 100 members in all. The other 21 members consist of the two executive councillors, and 19 persons nominated by the Governor, of whom 16 may be officials, one a representative of the domiciled Anglo-Indian community, one of the Indian Christians, and one of what is known as the depressed classes, the humble, useful folk who are outside the pale of the Hindu caste system. In some provinces there are other "fancy" constituencies—nominated representatives of labour, of aboriginal races, and so on. The Speaker or President is at present an official

with some experience of conducting public assemblies, who is busy in building up practice and tradition. In 1925 he will be replaced by a President elected by the legislature itself. The methods of procedure and debate in the council are fixed by statutory rules, and follow closely the essentials of our Parliamentary practice. Speeches are privileged, and the President has full power to preserve order. Hitherto the legislative output has been comparatively small. The old practice of putting voluminous questions continues, and the discussion of resolutions occupies much time, being a very natural way of hammering out new policy.

In the council which I have described no party system has yet been evolved: there has been a brush between the landlord interest and the lawyers, but no reliable indication of future grouping. The same is, I think, generally true in all provinces. What, however, is even more definite is the absence of any pro-government party, in this or any of the councils. If the Governor's executive has to ask, in relation to its own sphere of administration, for a law which is unpopular with the nationalists, it cannot count on anything but an almost negligible minority of votes in its support. Similarly, if it has to open a Budget

which runs counter to nationalist policy, it cannot hope to obtain its funds. Were the Constitution silent on this difficulty, we should have the impossible position, so far as the "reserved" field of administration is concerned, of an executive government which is subject to two masters: to the Secretary of State, who can remove it if it does not carry out his policy, and to the local legislature, who can prevent it from functioning if it does not carry out their policy. What would happen to the hapless executive when the two policies are not compatible? To this conundrum the peculiar emergency powers of the government furnish the reply. They are both positive and negative. If the Governor, in his executive capacity, requires a measure which he certifies to be essential for the discharge of his responsibility (i.e. to the Secretary of State) for a reserved subject, and if the legislature refuses to pass it, the Governor can make the necessary Act: but, except in cases of great urgency, any Act so made is specially reserved for His Majesty's pleasure after being laid before both Houses of Parliament, and does not become law until His Majesty's assent is notified. That is what I have called the positive power. The negative power has various degrees. The Governor

may veto an Act of his local legislature, or he may return it with recommendations for reconsideration, or he may reserve it for the consideration of the central government. Furthermore, he may prevent a Bill from being introduced, or an amendment from being moved, if he certifies that the Bill or amendment affects the safety or tranquillity of his province or of another province. So far in the matter of laws. With supply the procedure is simpler. Should the legislature reject a provision of money for a reserved subject which the government certifies to be essential to the discharge of his responsibility (i.e. to the Secretary of State) for the subject, then the Governor may indent on the Treasury for the necessary funds. Finally, the government may disallow a resolution, or a motion for adjournment, on the ground of detriment to the public interest. These extensive powers adequately protect in theory the executive control of the reserved field of administration. To what extent it may at any given time be expedient to exercise them in practice, is a question for the judicious Governor to determine on each occasion when it arises. In his Instrument of Instructions from the Crown which he receives on his appointment, broad canons of constitutional

conduct are laid down for his guidance, and he is advised to avoid an *impasse* except when the safety of the realm or the essential well-being of the people renders it inevitable. But crises are not always referable to exact rule, and the Governor must be trusted to judge the circumstances and the temper of the hour. It is the historical tendency of the elective principle to encroach on privilege ; and there will be nothing unexpected in the legislature asserting a frequent claim to control, and not merely to influence, the policy of the reserved departments. Therefore, said the joint committee of Parliament which dealt with the Act of Constitution, let it be perfectly clear that the Governor's power " is real and that its exercise should not be regarded as unusual or arbitrary."

We come now to the working of the dual provincial government, or dyarchy. In my last lecture we left it between the horns of a dilemma. On the one hand, we were agreed that inexperienced men cannot learn the art of administration without being given, albeit in a limited sphere, the opportunity of actually practising it. On the other hand, we were decidedly disquieted by the argument that administration is a seamless garment which cannot be parted in twain without

destroying it. How can one half of a provincial government be amenable only to the people of the province, as represented by the local legislature, while the other half is amenable only to the British Parliament, as represented by the Secretary of State? How can the ideals which the official executive will continue to pursue in the reserved departments harmonise with the new ideals which Ministers will endeavour to introduce in the transferred departments? And when they clash, must not the people be ground between them? Such are the awkward problems which the practical working of dyarchy has to solve.

In the solution we start with the all-important assumptions that the present agency in the districts for the daily conduct of public business will continue; that it will serve Ministers with the same honesty and loyalty as it serves the executive council; and that the Governor will insist that it receives the same consideration from one as from the other, and that it is not set the impossible task of giving effect to two conflicting policies. They are large assumptions to make, and throw a weighty burden upon the Governor. But, if they are fulfilled, they narrow down the business of harmonising the two halves of the government to the execu-

tive council and the Ministers themselves, and to the permanent officials who form their secretariat at headquarters. How an administrative problem which concerns both halves of the government would be approached may best be described by taking two concrete but hypothetical cases and following their evolution.

Let us suppose that the Minister in charge of Education has set his heart on a policy of compulsory primary schooling for all children up to a certain age. He will naturally talk it over with his permanent officials, and they will put the district inspectors to work on framing a scheme. The number of children affected, the number and locality of new schools required, the arrangements for training the necessary teachers, the curricula, and finally the probable cost, will all be worked out in detail, and summarised for the Minister. His next step will be to persuade the other Minister or Ministers to stand with him, so that they may present a united front in the legislature when the time comes. This arranged, the Governor will next be approached, though it may be presumed that, in a matter of this magnitude, he has been cognisant of the proposal from an early stage, and has assented at least to preliminary

inquiries. Meanwhile the idea has got noised abroad, or perhaps the Minister has been engaged in propaganda in support of it. And mutterings have started. The peasantry are beginning to take alarm, lest their children be forced to school at an age when they are actively employed on the family holding by the humbler cultivator. The Mohammedans happen to be in a suspicious mood, and are starting an agitation for exemption unless religious teaching is provided, or unless schools are closed on Friday as their day of prayer. An outcry is rising against any compulsion in the case of girls. The district magistrates, to whose ears these murmurs do not fail to come, have been warning the executive councillor who looks after law and order that trouble may eventuate; and the Governor has thus been separately approached from this side. At last a point comes at which he considers it advisable to bring his whole government together for a discussion of policy. They meet under his presidency, for consideration, not for decision, as there can be no decision for which the two halves of the government are jointly responsible. The Minister for Education propounds his scheme and argues its advantages to the national progress. His colleagues support



him.' The member of the executive council who holds the portfolio of Law and Order sets out the dangers, the hardship to the poorer cultivators, the racial susceptibilities involved, and the impropriety of using the police as attendance officers. Then the member in charge of Finance challenges the estimate of cost, urges the necessity for fees, and asks where the rest of the funds are to come from. Amendments of the scheme are volunteered to meet the objections, and an education rate is sketched out. You can imagine a prolonged and often a heated debate, or possibly series of debates. In the end the Governor has to decide whether the issue is primarily one of educational policy or one of public tranquillity; and according to his decision the further development of the proposals remains in the hands of Ministers or of the executive council as the case may be. Supposing that he is satisfied that the administrative and financial difficulties can be sufficiently met, and that he therefore places the policy with his Ministers, it will then be for him to thrash out with them the character of the legislation required to initiate the policy. He will no doubt advise them to modify the proposals for cases of special hardship, to compromise with the Mohammedan leaders, and in other

respects to make the scheme as little burdensome as possible, compatible with its main purpose of educating a future electorate. When he approves of the Bill which they finally determine to promote, his executive council will give it all reasonable support in the legislature. They will assist in rebutting unfair attacks upon it, and the Finance member will defend the provision of the necessary funds and commit himself to budgeting for them. But the Ministers will be responsible for carrying the legislature with them, and for getting the Bill passed. The policy will be theirs ; by its wisdom, and by the method in which they administer the new law, they will be judged when they come to render an account of their stewardship to the next Parliamentary Commission. There remains of course the possibility that Ministers may not be able to get their policy accepted by the legislature or to obtain their consent to the proposals for financing it. In that event, it will be for the Governor to decide whether he should dismiss his Ministers, or the Minister for Education, as having lost the confidence of the council. By such action, however, the position of the executive council would not be affected.

Let us now examine a converse and equally

hypothetical case, in which the initiative is taken by the other half of the government. Impressed by the growth of agrarian unrest, the Governor in his executive council, after all the necessary inquiries, proposes a new system of tenant's occupancy right against the landlord, with compensation for ejection, and so on. By a slight straining of his commission, the Minister who has Agriculture in his portfolio might argue that his department is concerned and demand a conference of the full government to discuss the scheme. This, however, would hardly be necessary; for in all matters of such moment the Governor would naturally wish to have Ministers with him, and would not stand on the strict letter of constitutional form. There would in practice be many discussions between the two halves of the government, both on the policy itself and on its major details. In the event of the Governor deciding to go on with it, the whole responsibility for arguing it in the legislature would rest on the executive council. If Ministers were converted to the policy, their support and influence in the council would be of great value; if they were not converted, there would presumably be a convention by which they would at least abstain from speaking or voting against the

scheme. At this point, however, the procedure in our two hypothetical cases diverges. Should the legislature reject the tenant right scheme, the Ministers have no responsibility. If they had supported it and failed, the Governor does not regard them as having forfeited the confidence of the council, and no question arises of replacing them. But what the Governor has to decide is whether he will persevere with his land policy in the teeth of his legislature. Provided he is satisfied that the law is essential to the discharge of his responsibilities for the well-being of the peasantry, he will make the Act under his special statutory powers, and submit it through the regular channels for His Majesty's approval. As every Act made in this way must be laid before both Houses of Parliament, any member who considers that the Governor has improperly exercised his special powers has an opportunity of drawing attention to the case by the ordinary procedure of moving an address to His Majesty for the disallowance of the measure.

This brief sketch of the probable procedure in these two cases may enable you, better than quotations from reports or standing orders, to see how it is hoped to escape from the dilemma which threatened to impale

dyarchy. No single compartment in administration is absolutely watertight. Very rarely indeed can a decision be taken in one without in some degree affecting the operations of another. And yet, if this argument were final, there would never be any devolution of ultimate authority by the supreme central power. It is very closely analogous to the stark problem which ever sits behind the saddle of the British Commonwealth itself. How is the independence of a Dominion to be accommodated with the supreme authority of the British Parliament? What is to happen when the interests or foreign relations of England conflict with those of any of her overseas partners? *Solvitur ambulando*. And in the same spirit of compromise we believe that the administration of an Indian province can for the present be conducted by two separate authorities, provided they are moderated and kept in touch with each other by the Governor, provided also that each honourably observes the conditions of the experiment. If unfortunately Ministers were to manipulate their transferred powers with a view to acquiring control over the reserved subjects, or if the Executive Council were to administer the reserved departments so as to curtail the

transferred powers, the conditions of the experiment would not be observed and Parliament would have to interfere. Thus dyarchy, besides being a constitutional novelty, is a high test of human nature.

In giving illustrations of the working of the dual system of government, I placed before you two cases of somewhat high policy. The daily work of the government is full of minor matters of policy and routine, in which the duty of harmony and the principle of consultation are just as valid as in the weightier problems, though they take less formal shape. In order that the Governor may be kept aware of such matters, all orders and proceedings of both halves of his government come before him in weekly schedules. But there is also a traditional and very valuable usage in India, which gives the permanent heads of departments regular access to the Governor and lays on them the duty of bringing to his notice all business in their respective departments which they consider he ought to know about. This procedure, puzzling though it is to many observers, has manifest advantages in the new regime.

I have left to the last the one subject in which, above all others, the risk of discord between the two halves of the government is

most to be apprehended. It is finance. How grave is the danger will be apparent when you consider the position of the provincial exchequer. It is a reservoir into which flow all the taxation imposed and revenue collected by both halves of the government, but there is no prescription of the quota which each must provide. It is also the reservoir from which both halves of the government draw for the charges of their administration ; but there is no limitation on the share which either may extract. Add to this that Ministers, in order to retain their hold over the legislature, are ever tempted to press, on the one hand for reduced taxation, on the other for higher expenditure on the more popular services under their control ; while the executive council are beset by the rising tide of charges for the less popular, but equally necessary, duties for which they are answerable. Can the possibilities of confusion and conflict go farther ?

Impressed by these fears, the Government of India, while the new Constitution was on the anvil, urged insistently the adoption of a system which became known as the "Separate Purse." This was to be an arrangement by which each half of the government would have its own treasury, or rather its

own side of the treasury. Each would receive the revenue derived from its own departments, and from that revenue it would have to meet the expenses of its own departments. If it required more money, it would be responsible for promoting its own taxation measures. It would prepare a self-contained Budget for its own half of the administration, which would be amalgamated into a consolidated Budget for the province. At the outset, however, allowance would have to be made for the absence of any theoretical symmetry in such a partition. Neither the reserved nor the transferred group of departments could be expected to be so accommodating as precisely to finance itself. The executive council, by virtue of their control of certain big heads of revenue, such as land revenue, would have more money than has normally been required in the past for the services they administer ; whereas Ministers saddled with heavy spending departments, such as education, would not have funds enough for their ordinary needs. Equilibrium could be procured by letting Ministers have a fixed subsidy from the reserved revenues, or a half or a third or some other fractional share of some specific item in those revenues. The adjustment to be made in this way could



be ascertained in the first instance by an independent inquiry, almost on statistical averages of the respective departmental receipts and outgoings. It might be desirable to revise the adjustment periodically; but in the intervals it would be the business of each half of the government, having been started with a reasonable provision of funds, to devote its energies to developing its own sources of revenue, in order to meet the expenses of its own administrative improvements.

In defence of the Separate Purse the arguments were obvious. In the knowledge that it would enjoy the fruit of its own labours, each half of the government would have a stimulus to get the best out of its own sources of revenue. It would be able to lay out its policy in advance for a series of years, without fear that those sources could ever be plundered by the other half. Its responsibility for raising fresh taxation and the uses to which it is put would always be clearly before the electorate. The yearly struggle, or even wrangle, for funds out of a joint exchequer at Budget times would be avoided, and, generally speaking, the temptation to one side of the government to meddle with the business of the other would be minimised.

These views were vigorously combated by the then Secretary of State and the Indian witnesses who appeared before the parliamentary joint committee. What appealed to Mr. Montagu was that the training of Ministers in financial responsibility would be incomplete, and their appreciation of the administrative problems of the full government would be only partial, unless they had a voice in the settlement of the provincial Budget as a whole. To the educative effect of the Joint Purse, the Indian politician frankly added another and more powerful consideration. For him the Joint Purse was a symbol of control, as opposed to mere influence: and he contended that the time had come to give the representatives of the people a real power in the allocation of revenues and the imposition of taxes.

It is arguable that there was some confusion of ideas; but the controversy is dead now, and I need not disturb its ashes. What Parliament accepted in the end was a compromise. The portfolio of Finance is to be in the hands of a member of the executive council. The Budget will be prepared by the full government in consultation, under the Governor's guidance, without any earmarking of separate revenues. If fresh taxa-

tion is needed, it will be discussed by the full government ; and both halves will be induced, if possible, to unite in justifying it before the legislature. But if, in framing the Budget in any year, the Governor is unable to get his executive council and his Ministers to agree on the apportionment of funds between their respective spheres, he will have power, either at his own discretion or with the assistance of an independent arbiter, to "allocate the revenue and balances of the province between reserved and transferred subjects, by specifying the fractional proportions of the revenue and balances which shall be assigned to each class of subject." This allocation may run until a year after the next general election, when a fresh attempt will be made to get a Budget by agreement.

Having now tried to show you the strength and weakness of dyarchy in its everyday working, I turn from the provinces to the central government. It is a curious and interesting example of the psychology of constitution-making. Finding themselves, as I explained in my last lecture, threatened with the anomaly of leaving the central government in India the only unregenerate link in the administrative chain, the designers

of the new scheme were in a somewhat serious quandary. On one side the insufficiency of the old regime beset them, as well as the claims of symmetry in the new constitutional edifice. On the other side they had taken their stand on the imperative duty of keeping the central power, the authority to which the country looks for external defence and internal order, free from any of the weaknesses that might accompany the experimental changes in the provinces. The former consideration was fatal to the *status quo*, the latter to dualism: for whatever merits dualism may have, it cannot pretend, while so near the embryo, to operate with the same promptitude and vigour as a unitary government. What, then, was left except to democratise the legislature and make the executive responsible to it? Such a step would obviously have gone far beyond anything that had been found possible in the provinces; and yet no alternative presented itself. So a compromise was effected and the first step was adopted, a democratic legislature, but not the second, a responsible executive. Back we had come to the position which we had spent so much powder and shot in destroying when the National Congress occupied it, the position into which

the Morley-Minto scheme seemed forcing us, and which we had hastened to abandon as untenable. *Plus ça change plus c'est la même chose.* The central government in India, however we embroider it, is composed of an irresponsible legislature and an irremovable executive.

The Legislative Assembly or Lower House consists of 144 Members: 104 elected, 26 officials, and 14 non-officials nominated by the Viceroy. Of the elected members, 47 represent Hindus, 28 Moslems, 8 Europeans, 2 Sikhs, 6 the land-holding classes, and 2 Indian commerce ; while there are 4 members for Burma, 1 for Berar, 1 for Delhi ; and 5 "fancy" constituencies. The franchise is higher than for the provincial legislatures. In the province which I formerly used as an exemplar, the qualifications are an income of £66 13s. 4d., or a house rent of £12, or the holding of land which is rented or taxed at £10 a year. The Council of State, or Upper House, is 60 strong, with 34 elected members and not more than 20 officials, the remainder being private persons nominated by the Viceroy. The constituencies are on somewhat similar racial and territorial lines to those in the Lower House ; but the franchises are quite different. In the first place, the pro-

perty qualifications are high ; an income of £666, or the payment of half that sum in land revenue, is required in the province I have cited before, and still higher figures obtain in some of the others. In the second place, certain personal qualifications are accepted : learning, as proved by fellowship of a University or membership of its Senate ; experience in public affairs, acquired in a legislature or as chairman or vice-chairman of a municipal or district board ; or commercial ability, as shown by having been president of a Chamber of Commerce or of a co-operative central society. The purpose was to secure an electorate with a senatorial mind, and councillors with the qualities of the Elder Statesmen.

Here, then, we have the first measure by which the framers of the constitution hoped to differentiate their new structure from the discarded principle. The Council of State would check any attempts by the more democratic Lower House to paralyse the official executive. To this end it is armed with certain powers. It can of course reject or amend a law passed by the Assembly. If that body expostulates, the council can reason with it in conference and ultimately throw its weight into voting on the measure

in a joint sitting of the two chambers. Should the council consent to a measure which the Viceroy certifies as "essential for the safety, tranquillity, or interests" of India, the Viceroy may forthwith make an Act of it even if the Assembly has rejected it. In matters financial, however, its attitude correctly follows our own Parliament Act. The Budget is laid before it, but not voted by it: and it has no power to alter any amendments made, or to restore any grants refused, by the Assembly. Thus far, the Upper House has not justified any exaggerated hopes that may have been formed of its moderating influence in a crisis. The Assembly has proved tenacious of its own privileges; and in a joint sitting the Council of State would rarely, if ever, turn the tide against a high wave of nationalist feeling. But the principle of a second chamber has been established for India; and if second chambers ever come into their own again in this iconoclastic world, they may have a future in that country as the constitution develops and matures.

Not on this somewhat debilitated weapon alone does the central executive in India depend for its defence against possible aggression by its legislature; for the Viceroy is left with certain overruling powers which I

mentioned briefly in my last lecture. He may veto a Bill. He may stop the further progress of any Bill or amendment which he certifies to affect the safety or tranquillity of the country. Or, if he wishes a Bill to pass and both chambers reject it, he may make an Act of it without their help, subject to no exception being taken by Parliament when he submits it for His Majesty's assent. On the financial side, the legislature has no direct voice in the matter of supply for the army, foreign relations, the public debt, and a somewhat extended Consolidated Fund. Should supply for other purposes be refused, the Viceroy has a discretion to appropriate it; and in emergency he can authorise any expenditure which may be necessary for the safety and tranquillity of the country. In this explanation I have sometimes used the term Viceroy for short, when the authority who actually functions is the Governor-General in Council.

You have now had under review the panoply of the central executive. Does it render that body invulnerable? Experience so far suggests a negative reply: it has only demonstrated once more how ineffective is any ingenuity of the draftsman to harmonise two incompatible principles. In March last



the executive framed military estimates which the legislature resented as being an unreasonably heavy burden on the taxpayer. It could not reject them however, it could not even discuss them ; and up to this point they were quite safe. But the matter did not end here : for, in order to balance the Budget fresh taxation was required, and this the Assembly refused to pass. It would have been open to the Viceroy to impose the new taxes under his overruling power, for presumably he was convinced, before he proposed it, that the military expenditure was essential to the safety and tranquillity of India. He did not exercise his special power : and a compromise was effected by which the army estimates will be reduced and the taxation proposals are abated. A similar impasse need never be far off when the executive has to put forward unpopular measures ; and the way out may not always be easy.

Here, then, we arrive at what I called the psychology of Constitution-making. Those who threw the central government into this particular mould were sufficiently alive to the inevitable consequences : they themselves had fully disclosed them in their criticism of the Congress-League scheme. Statutory safeguards may " have the gift of prophecy.

and understand all mysteries and all knowledge" ; but they will not make things easy for an executive which looks for its mandate elsewhere than from the powerful legislature to which it is tied, nor will they cultivate the sense of responsibility in a legislature which is always liable to be overruled by its executive. "It should be understood from the beginning," reported Lord Selborne's committee on one of the overruling provisions in the Act, "that this power of the Governor-General in Council is real, and that it is meant to be used if and when necessary." Unimpeachable as a statement of theory, this provides the Viceroy with little guidance when the pinch of practice comes. He uses his arbitrary powers. The legislature counters by rejecting his next measure or refusing funds. The bludgeon has to be employed again : and the cumulative process goes on until deadlock ensues and a whirlwind of popular agitation sends everybody scurrying in search of an amended Constitution. When I was describing the arrangements in the provinces I did not deal with this aspect of the case, though it presents itself there with the same features, if with minor emphasis. The Governor's relations with his legislature in regard to reserved subjects differ in degree,

but not in kind, from the Viceroy's relations with the central legislature in regard to all his business. On paper each of them has a wide discretion and an indefeasible authority. In practice each of them must walk warily indeed if he is to avoid a habit of conflict which may render the whole scheme of reform nugatory. For the Governor the position is eased by the existence of a field in which the will of the legislature is supreme, and where accordingly it can exercise its administrative ambitions. For the Viceroy's protection there is no such safety valve.

These implications were promptly realised by the Indian politician, and published on the housetops while the new constitution was still hot from the anvil. Did the draftsmen of the constitution not realise them also? I think we must assume that they certainly did, and that they had a definite purpose. That purpose was clearly to habituate the executive, even in discharging their own responsibilities, to rely more and more upon the support of their legislatures, and less and less upon the support of the British Parliament accorded through the Secretary of State. Under the old dispensation, if a Viceroy proposed to introduce a new policy, he had to persuade the Secretary

of State of the necessity for it and of its wisdom ; he had also to get the Secretary of State's consent to the measures for financing it. Under the new dispensation the Secretary of State will be difficult to persuade, unless the scheme has first obtained the blessing of the Indian legislature. The Viceroy of the future will consequently tend, in increasing measure, to consult Indian opinion first, and to count on its support rather than on the academic approval of Whitehall or Westminster. In precisely similar fashion, the provincial Governors will come to lean on their local legislatures rather than on the secretariats at Delhi. Thus, under a puzzling constitutional form, there is being effected a remarkable transference of power, or at least of influence so significant as to be barely distinguishable from power. Whether Parliament appreciated the extent to which it is divesting itself of authority over India, may safely be doubted. But it is in this undemonstrative fashion that the future polity of the British Commonwealth is being established.

Before leaving the central government, I ought to explain briefly a peculiar feature in its finances which has recently attracted some attention. Under the old system, there was a complicated adjustment of revenue

between the central government and the provinces. The former was unable, from the departments under its own control, to secure an income sufficient for their expenditure ; and it had accordingly to eke out its resources by taking a share of what the provinces collected. With changed conditions, this arrangement became untenable. Financial autonomy was demanded by the provinces, and the idea of paying tribute to the central government was scouted. At the same time the latter could not balance its own Budget, and a committee of arbitration was appointed to solve the problem. As postulates the committee was instructed to take the rupee at two shillings and military expenditure at a fixed and very moderate maximum ; both of which assumptions have been entirely upset by subsequent events. This much, however, in parenthesis. The outcome of the arbitrament was to fix a sum which each province should now contribute to the expenses of the central government, having regard to the present state of their respective finances ; and also to settle the ratio to be borne in future by each province in the deficit of the central exchequer, on the understanding that the central government will take such steps for expanding its own resources

as will permit of the gradual reduction and the final extinction of contributions from the provinces. The subject is a little complicated, and I mention it only because some of the provinces are already in rebellion against their contributions. The general difficulty of making ends meet, in a period of unexampled financial depression, has greatly increased the problems of the new Constitution.

Regarding the last stage in the official hierarchy, the India Office, there is little to be said. At one time, as I have mentioned earlier, extensive changes were contemplated ; but for the present they have not been pursued. By law the Secretary of State, as agent for the British Parliament, remains the proper authority to "superintend, direct, and control all acts, operations, and concerns which relate to the government or revenues of India"; and the Governor-General in Council, in his control of the civil and military Government of India, "is required to pay due obedience to all such orders as he may receive from the Secretary of State" (sections 2 and 33 of the Consolidation Act). Contrast this with the position to-day in actual practice of the Secretary of State for the Colonies in relation to a self-governing Dominion. The gradual

movement from the former position to the latter will be the measure of India's constitutional emancipation ; and we may be sure that it will not be effected by formal legislation. That has not been the British habit. In the present case the Secretary of State has been authorised by the Act of 1919 to restrict by rule the exercise of his own powers of control ; and inasmuch as the rules which he makes under this paradoxical provision have to receive the tacit assent of both Houses of Parliament, it may be taken that they represent the extent to which Parliament, without any fuss or declamation, relinquishes its own authority over the Indian administration. The rules made thus far restrict the Secretary of State, in his control of those departments which have been transferred to Ministers, to certain broad considerations, such as the safeguarding of Imperial interests or settling quarrels between two provinces. This is the first charter of independence for the popular half of the dual governments in the provinces.

But alongside of this curious, but simple, process of statutory devolution there is at work a more subtle operation, the gradual abdication of authority over the reserved departments and over those which remain

with the central executive. For them the Secretary of State continues fully responsible, inasmuch as they are under official control. As I have tried to show you, however, the tendency of the new Constitution is to throw the official executives into the arms of their own legislatures. It will be for the Secretary of State to relax his intervention accordingly. To some extent he can do this by Orders in Council, delegating authority in some of the many questions which formerly had to be referred from India for his sanction. But in the main the devolution of his power will take the form of a growing reluctance to interfere in matters in which the official executive moves with the concurrence of its legislature. In this way the ingenious cycle of the indirect transference of responsibility is completed, and the way is paved for the evolution of a new type of government, such as I shall attempt to forecast next Wednesday.

After hearing my story of the new machinery and its working, you may be thinking that there is much in it that is tentative and speculative and precarious. Perhaps there is. But if I may speak in a parable, this is how I picture to myself what might have happened if we had taken no risks. I picture to myself a vast and complicated engine, with



many levers and switches and gauges, some of them difficult to manipulate, others relatively easy. It is installed inside a great dome of glass. Within the dome are a small company of selected experts, industrious, devoted, who work the engine and keep all the keys of its mechanism in their own hands. Without the dome are a growing crowd of workmen, comparatively inexpert but anxious to learn. They are hungry to be allowed inside, instead of flattening their noses against the glass as they watch the wheels go round. Some of them want to study the engine, others aim at trying their prentice hands on the simpler levers. As they tell each other how it is they who paid for the engine, and it is they who live by the electricity it generates, their enthusiasm for taking some share in the working of it waxes bolder. I picture to myself what will happen if the experts within refuse them admission. I can see the angry men outside at last picking up stones and smashing the glass dome, and in the process irretrievably damaging the great engine. And I wonder if this would have been better than what we have courageously attempted.

## LECTURE VI

### ITS OUTLOOK

WHEN a Constitution has not been more than eighteen months in existence, it may seem as premature to attempt a forecast of its future as to estimate its results. But certain of its more obvious tendencies have been hinted at in my previous lectures, and the human interest in the experiment lies largely in our hopes for its development. Let us examine some of the more immediate problems before it, and some aspects of the raw material from which the new machinery will have to manufacture the future political life of India.

Let us first, however, dispose of one or two misunderstandings which have recently gained currency. When the recent controversy over military expenditure was in progress at Delhi between the central executive and their legislature, perfectly intelligent critics went about describing it as an example of the risks and weakness of dyarchy. Now, risks enough there are in dyarchy, as we have seen : but

this peculiar sort of trouble is not one of them. There is no dyarchy in the central government of India, and the difficulties over the army estimates were the difficulties of a unified executive dealing with a legislature to which it is not fully and finally responsible. They had no connection with the provincial system of dualism. Again, in a book of the highest authority which was published a few months ago a province in India is quoted as having "skipped dyarchy" in the sense, as I gather, that its executive council and its Ministers believe themselves to be working together as a unified government. This indicates another misunderstanding. The nearer that a provincial governor can get, by the freest and frankest consultation between the two halves of his government, to an agreement on all broad lines of policy, the better for his own comfort. But that does not mean the short-circuiting or dissolution of dyarchy. For even a unified government is not an autocracy: and the moment that the Secretary of State pulls up the Governor in Council for going too far in one direction, or the legislature pulls up Ministers for going too far in the other, the mechanism of dyarchy has to be brought into action. Moreover, the law requires every order of the government to

be authenticated as made by one or other half of the government ; and no plea of consultation can exempt the authority which has set its seal to a particular policy from being exclusively answerable for that policy, or from being judged by it at the next decennial Parliamentary inquiry.

Even from such misunderstandings as those to which I have referred, however, there is a lesson to be learned. It is that, during the seven or eight years before the first parliamentary committee, a good many edges will be worn off the Constitution. It will not be quite so smartly tailored as when it first left Committee Room A at Westminster. One test, though not of course the supreme test, of its daily working will be its reasonable elasticity : and this is ensured by the wide jurisdiction of the rule-making power, which may be exercised in minor matters with the tacit, and in major matters with the express, assent of Parliament. Whatever history may have to say on the broader statesmanship of the experiment, we need not apprehend that it will be crippled by any minor defect of mechanism.

One direction in which it seems likely that pressure for change will frequently be exerted is the enlargement of the bounds of the

popular half of the dual government in the provinces ; in other words, the removal of more departments from the control of the executive council and their addition to the list of departments under the control of Ministers. The present lines of demarcation were settled, after prolonged inquiry by a committee in India and careful investigation by a joint committee of both Houses of Parliament, and were formally approved by resolutions of both Houses. But young governments like young animals are impatient, and there already are signs of a disposition to demand that the transference of power shall proceed at a more rapid pace than the Act permits. This of course could technically be effected by amending the existing rules ; and if the Secretary of State were not urged by the standing committee of Parliament on Indian affairs, or if he rejected their advice, to get a formal resolution of Parliament, it would be within his discretion merely to " lay " the new rules on the chance of their being accepted without debate. The amendment would take the simple form of cancelling certain entries in the lists of " reserved " subjects in the provinces and inserting them in the list of " transferred " subjects. It is arguable, however, whether Parliament,

though it cannot bind itself, intended, this procedure to be adopted, and probably it would object if such a course were attempted. What the Act provides is the appointment, about the end of 1929, of a commission to inquire "into the working of the system of government, the growth of education, and the development of representative institutions, in British India," and to report "whether and to what extent it is desirable . . . to extend, modify, or restrict the degree of responsible government then existing therein." It is natural to suppose that Parliament would prefer to move on the advice of this commission, and not otherwise. It is also legitimate to anticipate that the commission will conduct its inquiry in the spirit of the notable preamble of the Act, which declares that in the development of self-governing institutions Parliament "must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed on their sense of responsibility." On this weighty issue the fruits of actual administration will presumably be accepted as evidence, rather than forensic assertions. A speeding-up of the process of transference at the present moment would

thus be a definite reversal of the policy enacted by Parliament in 1919.

Many Englishmen, searching for guidance as to the probable lines of normal growth, apart from formal changes in the Constitution, would turn for enlightenment to the party system and the prospects of its evolution. When we plume ourselves, as we justly do, on the part which the party system plays in the oxygenation of political life in England, we are apt to forget how long it took to acquire that salutary character. We can hardly expect it to emerge forthwith in a new Constitution, and particularly in a country with the fissiparous social traditions of India. In fact there have as yet been no trustworthy indications of how it will shape. Outside the legislatures, the most prominent political issue is co-operation or non-co-operation with the British Government in working the new Constitution. Obviously this is not an issue which can enter the legislatures and become the basis for the formation of parties. Non-co-operationists must, on their own hypothesis, remain outside and provide an argument, if there is anything in the preamble of the Act, for arresting or even reversing the advance to responsible government. If on the other hand the party, as

seems to be generally expected, change their tactics and put up candidates for the councils at the next general election, then *cadit quæstio*, and non-co-operation is dead in its present form.

Within the legislatures, a pseudo-party-system is suggested by the existence of communal representation. When in every chamber in the country you have so many seats reserved for Hindus who are to be elected exclusively by Hindu voters, and so many seats reserved for Moslems who are to be elected exclusively by Moslem voters, it would seem inevitable that the Hindu members and the Moslem members should form themselves into definite groups for the promotion of the interests of their respective co-religionists. Those of you who have read the report of Mr. Montagu and Lord Chelmsford will remember how hard they fought against the principle of separate representation for religions. They argued that it would be opposed to the teaching of history, that it would perpetuate class divisions, and that it would stereotype relations which in the past have been embittered by mutual suspicion and contempt. During their inquiry in India they laboured strenuously for agreement on a territorial rather than a racial



principle. It was the unmistakable sincerity and force of Mohammedan feeling which defeated them. Among the common people, as we shall see later, the natural instinct to live a peaceful life is subject to violent theological rupture at regular intervals; and each side looks to the State for protection against the other. The more educated classes cherish the same apprehension in a form more subtle and more related to the balance of political power and public office, which the Moslems believe to be slipping steadily from their hands. Both sides felt that the Lucknow compact of 1916, by which the National Congress and the Moslem League agreed in an arithmetical valuation of their respective interests in a new constitution, was a measure of protection to which at all risks they must cling. They were also intensely proud of it as a supreme effort of magnanimity. A constitutional principle, however questionable in the abstract, is difficult to resist when it is backed by the insistence of the proletariat as well as by urgent political expediency. And thus separate representation for Moslems was reluctantly conceded, as it had been in 1906 by Lord Minto and again in 1909 by Lord Morley. The Sikhs followed with a plea which their battle services made equally

unanswerable. The principle is established for the present.

If experience is required of sectarianism as a basis for party politics, we can provide it near home. In India it would in all probability be equally unfortunate. The first essential to the healthy give-and-take of public life is that men should forget the bitterness which for nearly one thousand years has surged between Hinduism and Islam. Clearly not a simple proposition, but one which their recent union in the demand for reform may bring nearer than any formal efforts at conciliation. For the moment at any rate there are no signs of acute sectarian grouping. It will probably be averted so long as we stand between the provinces and full responsible government. When that consummation arrives, the question will be whether the electorate has been sufficiently educated to postpone religious susceptibilities to a common patriotism.

Looking elsewhere for the germ of a party system we do not seem to find it where by some has been thought possible, in the clash between the interests of town and country. In reality there is no inherent conflict between the two. Industrialism is still in its infancy, and there can be no corresponding grievance

to that which the corn duties furnished in England. Urban and rural interests indeed would at present be content to unite in a policy of general protection with moderate export duties. While, however, we get no help in this direction, I think we have recently seen two straws in the wind. To one I have already alluded. A provincial legislature has recently been divided over a question of tenant-right. The landlord interest went solid against certain concessions which were urged on behalf of the tenants by a group of members calling themselves liberals and belonging to the legal and other professions. The second portent comes from Madras, where the non-Brahman community, or, more correctly, the Hindus of the higher castes other than the Brahman caste, have agitated with some success for the rectification of what they allege is the exclusive and unduly favoured position secured by Brahmans in the public life of that province. These two incidents point to the possibility, though not necessarily immediate or even near, of a party cleavage on lines very familiar to us : privilege *versus* rights, or an authoritarian order of society *versus* a demand for social liberty.

Speculation on this subject, however, is

naturally indefinite at so early a stage. It will become more feasible if and when the present party of non-co-operation enter the councils. Should their basic principles inspire a party movement—and I am convinced that they have roots too deep in the mind of Hinduism to be content with a less vigorous growth—we might then expect the makings of a weighty and permanent party issue: orthodoxy *versus* progress. I am very conscious how wrong it would be to use these terms as necessarily antithetic; but I cannot think of any other single pair of words which would express the picture. On the one side there would be a party which would find the canons of political life and social organisation in the religious or philosophic manuals of the past. In some respects they would be puritanical, aiming at greater simplicity of life and creeds. They would probably favour elaborate legal regulation of social relations, an exclusive policy in foreign affairs and tariffs and, generally, a reversion to certain older ideals in economics and statecraft. They would base themselves on authority rather than on reason; they would lean rather to established usage than to innovation. On the other side would be a party less disposed to ceremonial orthodoxy in their faiths, and

looking for more light in new scientific conceptions than in accepted dogmas. They would seek to blend the essentials of Indian life with whatever they could adapt of Western ideals. Their inclination would be towards closer relations with the rest of the British Commonwealth and an industrial policy. They would adopt theories of personal, fiscal, and social liberty. Both parties would be intensely Nationalist, but the radical divergence between them would open slowly out, as concrete cases arose to emphasise it. Meanwhile the two straws which we watched a few minutes ago seemed to be moving in the directions in which these winds of doctrine might be expected ultimately to blow.

Turning from those somewhat nebulous conjectures regarding political parties, we come to the type of government and of governmental policy which seems likely to emerge out of the new conditions. In my last lecture I tried to show you how, even in the departments still under its immediate direction, Parliament had, perhaps unwittingly, established a halfway house between the maintenance of the old British policy in India and the adoption of a definitely Nationalist policy. We saw how the British authorities in India are taught, by the position into

which the new Constitution has thrust them, to turn less and less to the Secretary of State for guidance and support, and to attune themselves more and more to the wishes of their own legislatures. We observed the habit of compromise already growing, and I think we recognised that a blending of ideals is on its way to replace our former insistence on our own administrative principles. Between now and the first decennial inquiry, unless the Constitution is to be always running on to the rocks, we shall witness a steady orientalisation of the government, side by side with a steady Indianisation of the public services ; and in the process our own British officials will be participants. There is no use in blinking the plain fact. That is what will happen, whatever the party system may be. For the protection of our own ideals we must look, first, to the success with which our teaching and example have already impressed them on the convictions of the intelligence of India ; and then to the skill with which, during this period of transition, our officials in India foster the sense of responsibility against the spirit of extravagance. And in the end it will be for Parliament to require that the process be not unduly one-sided ; that the sacrifice of principle be not

made wholly by us, and that there be no sacrifice of the vital principles of good government on which our Empire rests. With those safeguards we may live to see the administration of India transformed into a real national government, long before full responsible government by the people themselves is achieved. Concrete stages in this gradual transformation may not be sufficiently definite for description ; but one or two measurable changes are reasonably certain. The first, already started, is a campaign of economy, which will gradually strip India of the scientific establishments created for the enforcement of advanced standards in educational, sanitary, veterinary policy, and the like. Another example is the almost certain abolition of periodical revisions of the land revenue, at least in the provinces where there are landlords intermediary between the cultivator and the State. To this it is possible that Parliament would not object, if it receives adequate assurances against the abuses which prevail in Bengal where the assessments are already in perpetuity. Another tendency will be the substitution, wherever possible, of indirect for direct taxation : there being no financial heresy on which the Indian mind is more irrevocably set. And finally, a pro-

protective tariff is gradually being built up, and the cotton excise for which Lancashire has so tenaciously fought will have to be abandoned. It will be understood that, in this forecast, no account is taken of the changes which Ministers will initiate in the policy of their own transferred departments—changes with which Parliament has indirectly pledged itself not to interfere. They will be specially noteworthy, it may be assumed, in the fields of education and public health.

In this hurried sketch of the immediate future I have merely given you impressions which could be gleaned by anyone who has followed the public form of Indian political leaders during the last generation. It has long been apparent in what directions they would alter our lines of policy if they came into power : and it requires no seer's vision to forecast the more imminent changes they will introduce. It was not of course by reason of conversion to the views of the Indian Nationalist that we put him in a position to enforce those views. It was in order to make him the vehicle for bringing democratic practice into India ; and thus we arrive at the particular window from which the new Constitution looks out upon the most interesting phase of its new task. In the distance



on which it gazes is the vision of an intelligent electorate, warmed by the democratic principles of liberty and brotherhood, and shaping its power to the ends of a common patriotism. But the paths which lead to that millennium are long and full of difficulty. In surveying them we come, as I promised at the outset, into close quarters with the human material of the new experiment.

The first, and by far the most important, stage in treating this material is to educate the electorate of the future. It is not only that education is an essential preliminary to the intelligent use of the vote, to the dilution of that oligarchy which, according to some of its critics, the new Constitution is in danger of setting up. Education is in an even more imperative sense the first of India's problems, as by education alone can India vanquish the forces which are hostile to the growth of any true democratic spirit. And the task is gigantic. We saw that only 6 per cent. of the people respond to the most elementary test of literacy; and we should probably agree that until that figure is multiplied four or five times there can be no real popular basis for the new governments. But an extension of such magnitude will mean a generation of hard work and heavy outlay. The

problem of financing it alone, particularly when money is so badly needed in almost every other direction, will be one of the heaviest burdens on the new regime and one of its severest tests. Yet until this problem is faced and overcome, the Constitution will remain open to the reproach, which I have already quoted, of transferring India from an alien but experienced bureaucracy to an indigenous and inexperienced oligarchy.

Ignorance, however, is only one, though unquestionably the key to most, of the obstacles which we saw on the path to India's future. The anti-democratic forces in life are probably more abundant in India than in any other great country that has ever launched an attack upon them. They have a deeper hold upon the people, a hold so firm that none of us will live to see their expulsion. Merely to deflect or modify them will tax the fullest strength of the new political machine, and may convert India's future standard of civilisation into a form wholly unfamiliar to us to-day.

Most urgent of all national duties, though not necessarily most difficult, is the diversion into healthier channels of the energy which India now dissipates in the *odium theologicum*. In our own experience a life of vigorous

sectarian polemic is not inconsistent with patriotic purpose ; and the same is true of India in regard to its minor religious schisms. But the differences between Moslem and Hindu are always capable of shattering the public peace. For nine days out of every ten there is no reason why the two communities should not live amicably side by side, and they do. They work together, play together, trade with each other, do almost anything together except intermarry. But there are two battle-cries at the sound of which all goodwill ceases and the common people rally under their separate religious standards. One is idolatry, the other is the cow. No Mussulman can conceal his contempt for idol-worship, or his resentment when it disturbs his own observances. When the stentorian celebrations of Hindu festivals or weddings break in, as they frequently do, upon the fervid silence of the mosque or the ceremonial mourning of certain seasons, bitterness and even violence are never far off. Again, if there is one doctrine in the Hindu faith which knows no compromise, it is the sanctity of the cow. It comes down from earliest ages, when the cow was the closest friend of our common forefathers, the progenitors, though I suppose we must no longer call them the

Aryan progenitors, of Hinduism ; and it is intertwined with the heartstrings of the Hindu peasantry to-day. By a perversity which is not wholly accidental, the Moslems of Northern India have fixed on the cow as the one animal which it is fitting to slaughter, and to slaughter in considerable numbers, on a particular occasion in each year. The occasion celebrates the interrupted sacrifice of Isaac by his father Abraham on Mount Moriah : and in other Islamic countries camels, sheep, or goats are slain in the commemoration. In India the cow has become the favourite victim, partly for economic reasons with which I need not detain you, but partly also, I am afraid, because of the distress which it causes to the Hindus. It is impossible for us to assess the depth of the cumulative animosity generated from these two causes. It flares out, every now and then, in savage sporadic violence, which leaves trails of bitterness behind. It is true that the more enlightened men on both sides deplore the situation, but they cannot avoid being dragged in when trouble comes. At present their chief endeavour is to prevent outbursts of fanaticism from breaking the ranks of reform, and the restoration of order is left to the British administrator. But the

more, that responsibility devolves on the people themselves, the more urgent will it become to find a remedy for this evil in Indian life. When a remedy is discovered, and not till then, will it be possible to dispense with communal representation and its attendant ills.

To the Englishman, familiar with at least the theory of democracy, the chief difficulty in its application would seem to be a variety of social obstacles against which Indian reformers have long tilted in vain. He would enumerate, for example, the disadvantages of the caste system from the point of view of those equal opportunities for all men which are of the essence of democracy; he would dwell on the impediments which it offers to industrial freedom and individual enterprise. He would touch on the position of women, the general apathy that exists about their education and the remoteness, not so much of any real female franchise, about which there is no hurry, as of the exercise by women of a healthy influence on public life and morality. He would refer to economic drawbacks, mentioning some of the laws of inheritance, the infinite subdivision of property, certain pauperising tendencies of the Hindu joint family system, the abuse of religious mendi-

cancy, the wasteful marriage customs, and so on. In his enumeration he would probably forget that it is not impossible to find analogies to several of these troubles either in our own country or in other European States which have adopted democracy as their political creed.

Be that as it may, however, his list of problems is sufficiently serious. It indicates the vastness of the task with which Indian statesmen will have to grapple under the new Constitution before they can claim that their government rests on a popular basis or that they are bringing their country into line with the older democracies of the world. Nevertheless, when they fulfil their task, I think posterity will find that India has evolved a type of national life very different from what she now possesses, but also very different from anything that we have been pressing upon her. And it will find that type of life reflected in a Constitution unlike that of any self-governing nation to-day, and bearing little resemblance to the infant which was cradled in the Act of 1919.

What sort of confederacy will the varied peoples of India then present to the world? The Montagu-Chelmsford report hazarded an answer to that question. "Our conception,"

it says, " of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest. . . . Over this congeries of States would preside a central government, increasingly representative of and responsible to the people of all of them ; dealing with matters, both internal and external, of common interest to the whole of India ; . . . and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organisation of British India." The forecast is studiously cautious, and in some respects it is already possible to touch up the picture. It seems unlikely, in the first place, that the present map of India will last until the maturity of responsible government. Somewhat haphazard in their origin, our present provinces may prove inconveniently large for management by cohesive popular governments. Local interests with a separatist tendency exist, and will come into action when the centripetal influences of official rule are relaxed. The pressure of language will operate similarly ; for the use of the ver-

nacular in debates of the legislatures and in administrative business is bound to extend, and compact linguistic areas will naturally desire to have their own administrative centres. The number of constituent States in the future British India will thus, in all probability, be considerably larger than that of the present provincial units.

In the second place, the Native States cannot but be seriously affected. Ideas have a habit of overleaping territorial boundaries, and the intellectual movement in British India will assuredly have its reactions in the adjoining States. Individual chiefs who made no disguise of their sympathy with it in its earlier stages are growing considerably exercised over its unexpected success: and the moral which some of our critics are drawing from the States will be strikingly falsified. It has recently been fashionable to cite them as evidence of the popularity in India of the strong one-man rule: and they are supposed to contrast, in its general fitness for survival, the picturesque indigenous administration with our own drab and alien government. Whatever truth there may be in the antithesis, it affords no guide to another comparison—the comparison, to wit, between an indigenous autocracy and an indigenous democracy,



especially in cases where the former happens to fall short of that paternal ideal which is very definitely formulated in the Indian mind. There is thus a talk of impending constitutions even in the States: and where one or two of the more adventurous lead the way, others will in time follow. For in the Chamber of Princes we have not the least momentous or pregnant of the major changes which have been recently effected. Created for the discussion of matters of common interest to the different States, it will not be able to exclude from its purview the one topic of supreme interest to them all—the growth of free institutions across their borders. The spread of the movement into the States will be watched, views exchanged, competitive schemes of concession designed. As the process develops, we may expect that the old arbitrary sway of many of the princes will be tempered by popular assemblies with increasing ambitions and powers. Free from the dynastic tradition of formal alliance with Britain, these rejuvenated communities will come to find the need for closer political relations with the administrations in British India.

It is a unique type of federation that we see in the picture as thus enlarged. It may

contain some of our present provinces, while others will probably be broken up<sup>7</sup> and re-grouped on an ethnical or linguistic basis. Alongside of them will be States, conterminous with or forming groups of the present Indian States. In some of them absolutism may linger ; in others the form of government may approximate to a limited monarchy ; many will probably have reached responsible government. Some new form of federal union will bind the congeries together ; some new pattern of central power will combine them in face of the outer world. The tendency of the individual States will be at first towards partition into smaller communities. Economic causes will operate later to amalgamate those into larger units ; and the responsibilities of external defence will then have to be shouldered, as well as the problems of India's relations with other Asiatic powers. Meanwhile, during the long years that will be necessary to bring this new and many-hued Dominion to maturity, who will ensure that it is kept free from external aggression and from internecine struggles, free to work out, in peace and at leisure, its novel fortunes ? Who else but the naval and military forces of the British Commonwealth ? And thus, if for no other reason, will continue our associa-

tion with the greatest constitutional experiment in modern history.

The story of that experiment is now before you. Sir Courtenay Ilbert described the legal framework into which the structure of India's Constitution has to be fitted. I have tried to show you what the structure will be like and in which directions it seems disposed to expand. Sir Courtenay expressed hope and confidence in the future. That hope I respectfully echo. The Constitution which India has just received is full of novelties, and full of difficulties for all who are associated in its working. But it provides India, as no other country has been provided in history, with the choice of its own future, and our reward will be gauged by the wisdom of her choice.



## APPENDICES

### APPENDIX I

*Preamble of the Government of India Act,  
1919.*

### APPENDIX II

- (a) List of "Central" Subjects.*
- (b) List of Provincial "Reserved" Subjects*
- (c) List of Provincial "Transferred" Subjects.*

### APPENDIX III

*Instrument of Instructions to the Governor  
of a Province to which the Act applies.*



## APPENDIX I

### PREAMBLE OF THE GOVERNMENT OF INDIA ACT, 1919

THE following is the preamble of the Government of India Act, 1919 [9 and 10 Geo. V, Ch. 101].

. . . . .  
Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.

. . . . .

Here follows the Act, which exigencies of space do not allow to be printed *in extenso*. Copies can be obtained from Eyre & Spottiswoode, Ltd., through any bookseller, at a low price.



## APPENDIX II

### (A) LIST OF "CENTRAL" SUBJECTS

1. (a) Defence of India, and all matters connected with His Majesty's Naval, Military and Air Forces in India, or with His Majesty's Indian Marine Service or with any other force raised in India, other than military and armed police wholly maintained by local Governments.

(b) Naval and military works and cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads, namely :—

(a) railways and extra-municipal tramways, in so far as they are not classified as provincial subjects under entry 6 (d) of Part C of this Appendix ;

(b) aircraft and all matters connected therewith ;

(c) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

6. Shipping and Navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5 (c).

7. Light-houses (including their approaches), beacons, light-ships, and buoys.

8. Port quarantine, and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

10. Posts, telegraphs and telephones, including wireless installations.

11. Customs, cotton excise duties, income-tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department and excluded Audit Departments, as defined in rules framed under section 96D (1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature to be essential in the public interest.

20. Development of industries, in cases where

such development by a central authority is declared by order of the Governor-General in Council, made after consultation with the local government or local governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal Law, including criminal procedure.

31. Central police organisation.

32. Control of arms and ammunition.

33. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archæology.

37. Zoological Survey.

38. Meteorology.

39. Census and Statistics.

40. All-India Services.

41. Legislation in regard to any provincial subject, in so far as such subject is in Parts B and C of this Appendix stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.

43. Regulation of ceremonial, titles, orders, precedence and civil uniform.

44. Immovable property acquired by, and maintained at the cost of, the Governor-General in Council.

45. The Public Service Commission.

46. All matters expressly excepted by the provisions of Parts B and C of this Appendix from inclusion among provincial subjects.

47. All other matters not included among provincial subjects under Parts B and C of this Appendix.

### (B) LIST OF PROVINCIAL "RESERVED" SUBJECTS

1. European and Anglo-Indian Education.

2. The construction and maintenance of residences of Governors of Provinces.

3. Water supplies, irrigation and canals, drainage and embankments, water storage and water power ; subject to legislation by the Indian legislature with

regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

4. Land Revenue administration, as described under the following heads, namely :—

- (a) assessment and collection of land revenue ;
- (b) maintenance of land records, survey for revenue purposes, records of rights ;
- (c) laws regarding land tenures, relations of landlords and tenants, collection of rents ;
- (d) Courts of Wards, incumbered and attached estates ;
- (e) land improvement and agricultural loans ;
- (f) colonisation and disposal of Crown lands and alienation of land revenue ; and
- (g) management of Government estates.

5. Famine Relief.

6. Forests, including preservation of game therein : subject to legislation by the Indian legislature as regards disforestation of reserved forests.

7. Land Acquisition : subject to legislation by the Indian legislature.

8. Administration of justice, including constitution, powers, maintenance and organisation of Courts of civil and criminal jurisdiction within the province ; subject to legislation by the Indian legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any Courts of criminal jurisdiction.

9. Provincial law reports.

10. Administrators General and Official Trustees ; subject to legislation by the Indian legislature.

11. Non-judicial stamps, subject to legislation by the Indian legislature, and judicial stamps, subject to legislation by the Indian legislature as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

12. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

13. Industrial matters included under the following heads, namely :—

- (a) factories ;
- (b) settlement of labour disputes ;
- (c) electricity ;
- (d) boilers ;
- (e) gas ;
- (f) smoke nuisances ; and
- (g) welfare of labour, including provident funds, industrial insurance (general, health, and accident) and housing ;

subject as to heads (a), (b), (c), (d) and (g) to legislation by the Indian legislature.

14. Stores and stationery required for transferred departments, subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

15. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

16. Inland waterways, including shipping and navigation thereon so far as not declared by the

Governor-General in Council to be central subjects, but subject as regards inland steam-vessels to legislation by the Indian legislature.

17. Police, including railway police ; subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

18. The following miscellaneous matters, namely :

- (a) regulation of betting and gambling ;
- (b) prevention of cruelty to animals ;
- (c) protection of wild birds and animals ;
- (d) control of poisons, subject to legislation by the Indian legislature ;
- (e) control of motor vehicles, subject to legislation by the Indian legislature as regards licences valid throughout British India ; and
- (f) control of dramatic performances, and cinematographs, subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

19. Control of newspapers, books and printing presses ; subject to legislation by the Indian legislature.

20. Coroners.

21. Excluded areas.

22. Criminal tribes ; subject to legislation by the Indian legislature.

23. European vagrancy ; subject to legislation by the Indian legislature.

24. Prisons, prisoners (except State prisoners) and

reformatories ; subject to legislation by the Indian legislature.

25. Pounds and prevention of cattle trespass.

26. Treasure trove.

27. Provincial Government Presses.

28. Elections for Indian and provincial legislatures subject to rules framed under sections 64 (1) and 72A (4) of the Act.

29. Regulation of medical and other professional qualifications and standards ; subject to legislation by the Indian legislature.

30. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

31. Control, as defined by rule, of members of all-India and provincial services serving within the province, and control, subject to legislation by the Indian legislature, of public services within the province, other than all-India services.

32. Sources of provincial revenue, not included under previous heads, whether—

(a) taxes included in the Schedules to the Scheduled Taxes Rules, or

(b) taxes, not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

33. Borrowing of money on the sole credit of the province, subject to the provisions of the Local Government (Borrowing) Rules.

34. Imposition by legislation of punishment by fine, penalty or imprisonment, for enforcing any



law of the province relating to any provincial subject; subject to legislation by the Indian legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

35. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

36. Matters pertaining to a central subject in respect of which powers have been conferred by or under any law upon a local Government.

NOTES.—Subject No. 6 (Forests) is transferred in Bombay only.

Certain other subjects [see App. II (C)] are reserved in Assam only.

### (C) LIST OF PROVINCIAL "TRANSFERRED" SUBJECTS

Subject.	Transferred in
<p>1. Local self-government—that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards (a) the powers of such authorities to borrow or otherwise than from a provincial Government, and (b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.</p>	<p>All Governors' provinces.</p>

Subject.	Transferred in
2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.	All Governors' provinces.
3. Public health and sanitation and vital statistics ; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.	Ditto.
4. Pilgrimages within British India .. ..	Ditto.
5. Education, other than European and Anglo-Indian education, provided that—	Ditto.
(a) the following subjects shall be excluded namely:—	
(i) the Benares Hindu University, the Aligarh Muslim University and such other Universities, constituted after the commencement of these rules, as may be declared by the Governor-General in Council to be central subjects, and	
(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and	
(b) the following subjects shall be subject to legislation by the Indian legislature, namely :—	
(i) the control of the establishment, and the regulation of the constitutions and functions, of Universities constituted after the commencement of these rules, and	
(ii) the definition of the jurisdiction of any University outside the province in which it is situated, and	
(iii) for a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organi-	

Subject.	Transferred in
<p style="text-align: center;">sation of secondary education in the presidency of Bengal.</p> <p>6. Public Works included under the following heads, namely:—</p> <p>(a) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (1) of that Act: provided that the Governor-General in Council may, by notification in the Gazette of India, remove any such monument from the operation of this exception;</p> <p>(b) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe;</p> <p>(c) tramways within municipal areas; and</p> <p>(d) light and feeder railways and extra-municipal tramways in so far as provision for their construction and management is made by provincial legislation, subject to legislation by the Indian legislature in the case of</p>	<p>All Governors' provinces, except Assam.</p>

Subject.	Transferred in
<p>any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.</p>	
<p>7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.</p>	<p>All Governors' provinces.</p>
<p>8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.</p>	<p>Ditto.</p>
<p>9. Fisheries .. .. .</p>	<p>All Governors' provinces, except Assam.</p>
<p>10. Co-operative Societies .. .. .</p>	<p>All Governors' provinces.</p>
<p>11. Forests, including preservation of game therein ; subject to legislation by the Indian legislature as regards disforestation of reserved forests.</p>	<p>Bombay.</p>
<p>12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.</p>	<p>All Governors' provinces, except Assam.</p>
<p>13. Registration of deeds and documents ; subject to legislation by the Indian legislature.</p>	<p>All Governors' provinces.</p>
<p>14. Registration of births, deaths and marriages ; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.</p>	<p>Ditto.</p>

Subject.	Transferred in
15. Religious and charitable endowments ..	All Governors' provinces.
16. Development of industries, including industrial research and technical education.	Ditto.
17. Stores and stationery required for transferred Departments, subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.	Ditto.
18. Adulteration of food-stuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.	Ditto.
19. Weights and measures; subject to legislation by the Indian legislature as regards standards.	Ditto.
20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.	Ditto.

### APPENDIX III

#### INSTRUMENT OF INSTRUCTIONS FROM THE CROWN TO THE GOVERNORS OF PRO- VINCES TO WHICH THE ACT APPLIES

Whereas by the Government of India Act, provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realisation of responsible government in that country as an integral part of Our Empire ;

And whereas it is Our will and pleasure that, in the execution of the Office of Governor in and over the Presidency of Fort William in Bengal, you shall further the purposes of the said Act, to the end that the institutions and methods of government therein provided shall be laid upon the best and surest foundations, that the people of the said presidency shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained ;

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows :—

I. You shall do all that lies in your power to maintain standards of good administration ; to encourage religious toleration, co-operation and goodwill among all classes and creeds ; to ensure the probity of public finance and the solvency of the presidency ; and to promote all measures making for the moral, social, and industrial welfare of the people, and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

II. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement ; that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the legislative council, being enabled to perceive the effects of their choice of a representative, and that those who are returned to the council, being enabled to perceive the effects of their votes given therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

III. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of Our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you

so to regulate the business of the government of the presidency that, so far as may be possible, the responsibility of each for these respective classes of matters may be kept clear and distinct.

IV. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

V. You shall assist Ministers by all the means in your power in the administration of the transferred subjects, and advise them in regard to their relations with the legislative council.

VI. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the legislative council and to the wishes of the people of the presidency as expressed by their representatives therein.

VII. But in addition to the general responsibilities with which you are, whether by statute or under this Instrument, charged, We do further hereby specially require and charge you :—

- (1) to see that whatsoever measures are, in your opinion, necessary for maintaining safety and tranquillity in all parts of your presidency and for preventing occasions of religious or racial conflict, are duly taken, and that all orders issued by



Our Secretary of State or by Our Governor General in Council on Our behalf to whatever matters relating are duly complied with ;

- (2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, specially rely upon Our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer, or have cause to fear, neglect or oppression ;
- (3) to see that no order of your Government and no Act of your legislative council shall be so framed that any of the diverse interests of or arising from race, religion, education, social condition, wealth or any other circumstance, may receive unfair advantage, or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large ;
- (4) to safeguard all members of Our services employed in the said presidency in the legitimate exercise of their functions, and in the enjoyment of all recognised rights

and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution ;

- (5) to take care that, while the people inhabiting the said presidency shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interest shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

VIII. And We do hereby charge you to communicate these Our Instructions to the Members of your Executive Council and your Ministers and to publish the same in your presidency in such manner as you may think fit.

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person owns a family dwelling house or a share in a family dwelling house in a constituency and that that house has not been let on rent during the preceding twelve months.

*B. Taxation Qualifications.* A person is qualified to be included in the electoral roll for a territorial constituency, if for the previous financial year (a) he pays income tax; or (b) pays not less than fifty rupees as direct municipal or cantonment tax; (c) or pays hasiyat or profession tax amounting to not less than two rupees, or some other direct tax under the Punjab District Boards' Act of the same amount.

Payment of  
Income tax ;  
Municipal or  
Cantonment  
tax ; Hasiyat  
or Profession  
tax ; or some  
other direct  
tax

Owner of  
land.

Occupancy  
Tenant

Assignee of  
land revenue.

Tenant of  
irrigated  
and unirri-  
gated land

Owner of  
immovable  
property

Tenant of  
immovable  
property

Zaildar,  
Inamdar etc.

Primary  
standard

*C. Property Qualifications.* A person is also qualified as a voter for any territorial constituency, if (a) he is the owner of land in the Province assessed to land revenue of not less than five rupees per annum; or (b) is a tenant with a right of occupancy in respect of land assessed to land revenue of not less than five rupees per annum; or (c) is an assignee of land revenue in the Province amounting to not less than ten rupees per annum; or (d) is a tenant of not less than six acres of irrigated land in the constituency or of not less than twelve acres of un-irrigated land in the constituency; (A person, who is the tenant of both irrigated and un-irrigated land in the constituency is considered to have satisfied this condition if the sum of the area of the irrigated land and half the area of that unirrigated land is not less than six acres); or (e) throughout the previous year has owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees not being land assessed to land revenue; or (f) throughout the previous year has been a tenant of immovable property, not being land assessed to land revenue, of an annual rental value of not less than sixty rupees; or (g) is a Zaildar, Inamdar, Sufedposh or Lambardar in the constituency.

*D. Educational Qualifications.*—A person is also qualified to be included in the electoral roll for any territorial constituency, if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard. It is provided in the rules that the application of a person who claims enrolment on the basis of literacy or of an

educational qualification must be wholly in the handwriting of the applicant, and must include a statement to that effect in the application. It must either be written in the presence of a person authorised to receive such applications, or must be attested to have been written by the applicant by any Magistrate or Sub-Judge or Head Master or Head Mistress of any recognized school, or by any Gazetted Government Officer or any Inspector of the Co-operative Department or by any Sub-Registrar. A person, who claims enrolment as a voter on the ground of having passed the primary or any higher standard of education, is required to produce with his application a certificate issued by the appropriate Education Department or a copy of the same duly attested. The passing of the primary standard can be proved by the production of a copy, attested by the Issuing Authority, of the admission and withdrawal register of a Primary School. If, however, an applicant writes his application in English, he is considered to have passed the Primary standard.

Retired Military Officers

*E. Service of His Majesty's Forces.* A person is entitled to be included in the electoral roll for any territorial constituency, if he is a retired, pensioned, or discharged officer, non-commissioned officer or soldier in His Majesty's Regular Military Forces.

Pensioned widows or mothers

*F. Additional Qualifications for Women.* A woman is entitled to be included in the electoral roll for a territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's Regular Military Forces, or (b) if she is a literate person, or (c) if her husband possesses the following qualifications:—

Literate persons

Special Qualifications possessed by the husband

(1) if he pays income-tax for the previous financial year or pays any direct municipal or cantonment tax amounting to not less than fifty rupees; or

(2) if he is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Military Forces; or

(3) if he owns or has in the past year owned immovable property in the Province, of the value of not less than four thousand rupees or of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue; or

(4) if in the preceding year he has occupied as a tenant immovable property, not being land assessed to land revenue, of an annual rental value of not less than ninety-six rupees; or

(5) if he is the owner of a land in the Province assessed to land revenue of not less than twenty-five rupees per annum; or

(6) if he is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum; or

(7) if he is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency of the annual rental value of at least twenty-five rupees; or

(8) if he is a tenant with a right of occupancy regarding land assessed to land revenue of at least twenty-five rupees per annum.

It should also be noted that under the rules, in cases where literacy is the required qualification as referred to above, the writing of the application by an applicant is accepted as a sufficient proof for the purpose. It is also laid down in the rules that an application submitted by a wife on the ground of any qualification of her husband should state the particular qualification of the husband on which the claim is based.

Literary  
Qualifica-  
tions

Qualifica-  
tions to be  
specified

#### G. *Special Qualifications for the Scheduled Castes.*—

A member of a Scheduled Caste is entitled to be included in the electoral roll of a territorial constituency if he is literate, or in the previous year has owned immovable property in the Province, not being land assessed to land revenue, of the value of at least fifty rupees, or has in the preceding year owned *malba* of a house in the Province of the value of not less than fifty rupees, or has during the previous year occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees.

Literacy

Ownership  
of immovable  
property

In the case of *special constituencies* in the Punjab, the general qualifications and disqualifications mentioned above also apply. It is provided in the Government of India (Provincial Legislative Assemblies) Order, 1936, that where at an election a poll is taken for filling up more than one seat, a voter shall have as many votes as there are seats and may cast

Special Con-  
stituencies

No voting in  
two Consti-  
tuencies

these votes in favour of one candidate, or may distribute these votes among the candidates as he thinks fit. But no person is entitled to be included twice in the electoral roll for any particular constituency, and the fact that a person has been so included in the electoral roll does not increase his rights as respects voting.\*

Women Seats

European  
Seats

Indian  
Christian  
Seats

Commerce  
and Industry  
Seats

Landholders'  
Seats

Labour Seats

It is laid down† regarding Women Seats that no man is entitled to vote at any election in any Muhammadan constituency reserved for women. A woman is not qualified to stand from a women constituency unless she is entitled to vote in the choice of a member to fill that seat, or some other seat belonging to the same community. In the case of a European Seat, a person is not qualified to stand unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat. The same rule applies to an Indian Christian Seat, where the candidate is required to be an Indian Christian. In the case of Commerce and Industry Seat, a person is qualified to be included in the electoral roll, if he is himself a qualified member or is the nominee for the purpose of a firm, Hindu Joint Family or corporation which is a qualified member of one of the constituent bodies. These constituent bodies under the rules are the Northern India Chamber of Commerce, the Punjab Chamber of Commerce, the Indian Chamber of Commerce, and the Punjab Trades Association. In respect of Land-holders' Seats, it is provided that they are to be filled up by representatives of land-holders in the specified constituencies. Regarding the Tumandars' Seat, it is laid down that a person is not qualified to be included in the electoral roll unless he is resident in the Province and is a Tumandar recognized by the Government, or a person who is performing the duties of a Tumandar under the sanction of the Government. The Labour seats are divided between a Trade Union Labour Seat and two non-Union Labour Seats. The electoral roll for the Trade Union constituency is based on membership of the North Western Railway Union, while that of the non-Union Labour constituency is based on employment at qualifying industrial establishments such as factories and mines. For the Labour constituency, six months' residence

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\*The Government of India (Provincial Legislative Assemblies) Order, 1936, 18 (2) † Ibid. Part VI, 21.

in the Province is also necessary. A person employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity is not qualified to be included in the electoral roll for a Labour constituency. One, who is subject to Indian Military Law, is not qualified to be included in the electoral roll for any Labour constituency.

As far as the University Seat is concerned, a person is qualified to be included in the electoral roll for the University constituency, if he has a place of residence in India, and is a member of the Senate of the Punjab University, or has been for at least seven years a graduate of the Punjab University and was registered as such in the University Register throughout the two years immediately preceding the prescribed date. A candidate for the seat must possess the necessary qualifications for enjoying the right to vote for the seat, otherwise he is not qualified to be chosen to fill the seat.\*

University  
Seat

**Some General Provisions regarding Provincial Legislatures : Officers of the Chambers.**—Every Provincial Legislative Assembly is required to choose two of its members to be its *Speaker* and *Deputy Speaker*, respectively. So often as these offices fall vacant, the Assembly is to choose another member or members to fill up the office or offices, as the case may be. The Speaker or the Deputy Speaker of the Assembly holds office only as long as he is a member of the Assembly. He may resign his office any time by writing to the Governor. He may also be removed from office by a resolution of the Assembly passed by a majority of the members after a notice of at least fourteen days.

The  
Speaker and  
the Deputy  
Speaker  
of the  
Assembly

When the office of the Speaker is vacant, the Deputy Speaker performs the duties of that office. When the office of the latter is also vacant, such a member of the Assembly as the Governor may, in his discretion, appoint, performs those duties. During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker acts as the Speaker. But if he is also absent, such a person as may be determined by the rules of procedure of the Assembly, acts as the Speaker, and in the absence of even such a person, a person determined by the Assembly, acts as the Speaker. When the Assembly is dissolved, the Speaker is not called upon to vacate his office until immediately before the first meeting of the Assembly after the dissolution.

The President and the Deputy President of the Council

These provisions, except one in respect of the vacation of the office on the dissolution of the Assembly, also apply to the Provincial Legislative Councils, where they exist, but the "Speaker" and the "Deputy Speaker," in this case, are to be called the *President* and the *Deputy President*. The Speaker or the President, or a person acting as such, cannot vote in the first instance, but possesses a casting vote and can exercise it in the case of an equality of votes.\*

Advocate-General cannot vote

**Rights of the Ministers and the Advocate-General in respect of the Chambers.**—Every Provincial Minister and the Provincial Advocate-General have the right to speak in and otherwise participate in the proceedings of the Provincial Legislature, in any joint-sitting of the Chambers of the Legislature, and any Committee of the Legislature of which they may be named members. This provision does not confer the right to vote on the Advocate-General and the Ministers, but the latter enjoy that right by virtue of their being elected members of the Legislature while the Advocate-General cannot claim that right.†

Discretion of the Governor

**Meetings of the Legislatures.**—The Chamber or Chambers of the Provincial Legislature, as the case may be, must be summoned to meet at least once every year. Not more than twelve months are to intervene between the last sitting in one session and the first sitting in the next session of the Chamber or the Chambers. Subject to this, the Governor, in his discretion, may from time to time summon the Chamber or Chambers at any time and place, prorogue them, or dissolve the Legislative Assembly. Regarding the first session of the Chamber or Chambers of the Provincial Legislature, it is laid down in the Act that it should not be held later than six months after the introduction of Provincial Autonomy.‡

Governor's Powers

The Governor is empowered to address, in his discretion, any Chamber of the Provincial Legislature or both Chambers assembled together. He may require the attendance of the members for the purpose. He can also, in his discretion, send messages to the Chamber or Chambers with respect to a pending or any other Bill. A Chamber, to whom any such message is sent, is required to consider forthwith any matter which is required by the message to be taken into consideration.§

**Voting in the Chambers.**—Except as otherwise provided in the Act, all questions in a Chamber, or

\* Sec. 65. † Sec. 64. ‡ Sec. 62. § Sec. 63.

joint sittings of the Chambers, of a Provincial Legislature, are determined by a majority of votes of the members present and voting other than the speaker or the President, or the person acting in their place. The Provincial Legislature is empowered to act even if there is any vacancy in its membership. The proceedings of the Legislature are deemed valid notwithstanding that it is discovered later on that some person, who was not entitled to sit or vote, sat or voted, or otherwise took part in the proceedings. The quorum of members is fixed at one-sixth of the total members in the case of the Assembly and at least ten members in the case of the Council.\*

Majority  
vote

Quorum

**Provisions in respect of the Members of the Legislatures.**—Every member of the Provincial Legislature, before taking his seat in the Chamber is required to take an appropriate oath before the Governor or some person appointed by him according to one of the forms set out in the Fourth Schedule to the Act.

Taking of  
Oath

No one can be a member of both the Chambers of the Legislature. If a person is chosen member of both the Chambers, his seat in one Chamber or the other falls vacant according to the rules made by the Governor.† In accordance with a Rule‡ in the Government of India (Provincial Legislative Assemblies) Order, 1936, if a person is elected to more than one seat in the Legislative Assembly of a Province then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant. A person cannot be a member of both the Federal Legislature and the Provincial Legislature. If a person is chosen a member of both and has not resigned his seat in the Federal Legislature, his seat in the Provincial Legislature falls vacant at the expiration of the period specified in the rules made by the Governor. A seat also falls vacant, if a member becomes disqualified to hold it, or resigns it. The Chamber may also declare vacant the seat of a member who absents himself without permission of the Chamber from all its meetings for sixty days. In computing this period of sixty days, no account can be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.§ Under this provision a seat was declared vacant in the United Provinces' Legislature, and a by-election was held to fill up the seat.

Membership  
of one  
Chamber  
only

Election to  
one seat only

Membership  
of one Legis-  
lature only

Vacancies

**Privileges of the Members.**—Freedom of speech is granted to the members in the Provincial Legislature subject to the provisions of the Act and to rules and

Freedom of  
Speech

\* Sec. 66, † Sec. 68 (1) ‡ Rule 19, § Sec. 68 (4).

No liability  
in respect of  
a speech  
in the  
Legislature

No discus-  
sion of the  
conduct of  
any Judge

Governor's  
power of  
stopping  
discussion

Other  
Privileges

Punishment  
of persons  
who refuse  
to give  
evidence

No status of  
a court

can make  
laws for the  
Province in  
respect for  
matters on

standing orders. No member of the Legislature is liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any Committee of the Legislature. No person is liable to any proceedings for the publication by or under the authority of a Chamber of a Legislature of any report, paper, vote or proceedings. The members, however, cannot discuss in a Provincial Legislature the conduct of any Judge of the Federal Court or of a High Court in the discharge of his duties.\* Discussion cannot take place also if the Governor in his discretion certifies that the discussion of a Bill or of any clause or of any amendment would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace and tranquillity of the Province.\* Other privileges of the members of the Provincial Legislature are to be such as may from time to time be defined by an Act of the Provincial Legislature; until that is done they are to be such as were immediately before the commencement of the Provincial Part of the Act, of 1935, viz., before the 1st of April, 1937. An Act of the Provincial Legislature can also make a provision for the punishment after conviction by a court of persons, who refuse to give evidence or produce the necessary documents before a Committee of a Chamber when required by the Chairman of the Committee to do so. This Act shall have effect subject to the rules made by the Governor by the exercise of his individual judgment for regulating the attendance before such Committees of persons who are, or were in the service of the Crown in India, and safeguarding confidential matter from disclosure. No existing Indian law or the Constitution Act confers or empowers any Legislature to confer on a Chamber or on both Chambers in a joint sitting or any Committee or officer, of the Chamber, the status of a Court or any other punitive or disciplinary powers other than the power to remove or exclude persons breaking the rules or standing-orders of the Chamber or otherwise behaving in a disorderly manner in the Chamber.†

#### **Powers and Functions of the Provincial Legislatures.—**

A Provincial Legislature can make laws for the Province or for any part thereof; with respect to matters enumerated in the List II in the seventh

\*Sec. 86. † Sec. 71. Exercising its powers under this Section, the Punjab Assembly passed a Sergeant-at-Arms Bill, providing for the appointment of a Sergeant-at-Arms to help the Speaker in the maintenance of order in the House ‡ Sec. 99.



Schedule to the Act, called the Provincial Legislative List.\* It has also concurrent power with the Federal Legislature to make laws with respect to any of the matters enumerated in the List III in the Seventh Schedule, called the Concurrent Legislative List.† It has further power to make laws with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to the Act, if the Governor-General by public notification empowers it to do so.‡ In order to avoid inconsistency or conflict between the Federal laws and the Provincial laws regarding matters on the Concurrent Legislative List, it is laid down that the Federal law, whether passed before or after the Provincial law, is to prevail and the Provincial law is to be considered void to the extent of repugnancy. If, however, such a Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the Governor-General's or His Majesty's assent, the Provincial law is to prevail in that Province, though the Federal Legislature can at any time enact further law regarding the same matter§ As has been stated before, the Governor-General has the power to declare by a Proclamation of Emergency that a grave emergency exists whereby the security of India is threatened. In that case the Federal Legislature has the power to make laws for a Province with respect to matters on the Provincial Legislative List. If a Federal law passed in pursuance of this provision is in conflict with any provision of a Provincial law, the former is to prevail and the latter to the extent of repugnancy is to be considered void so long as such a Federal law remains in operation.|| In the Government of India Amendment Act which has been introduced in the House of Lords, an attempt has been made to widen the scope of this provision which only leads with powers of legislation. The new provision is calculated to extend the Federal executive authority over the Provinces in the event of emergency arising out of war.

The Provincial Legislative List

Concurrent Powers

Residual Powers of Legislations

Inconsistency between Federal laws and Provincial laws

Power of the Federal Legislature to legislate if an emergency is proclaimed

**Restrictions on the Powers of the Provincial Legislatures.**—The Provincial Legislatures are not sovereign law-making bodies with unlimited powers; rather their authority extends over a definite sphere as has been described above. In addition to this, some other restrictions have been put on their powers under the provisions of the Act. No discussion can take

Not sovereign law-making bodies

\* Sec. 100 (3); † Sec. 100 (2); ‡ Sec. 104, § Sec. 107. || Sec. 102 (See page 89).

No discussion of the conduct of a Judge

Encroachment on the Special Responsibility for the prevention of any grave-menace to the peace and tranquillity of any Province

The Instrument of Instructions

Previous sanction of the Governor-General

Previous sanction of the Governor

Recommendation of the Governor

place in a Provincial Legislature with respect to the conduct of any Judge of the Federal Court or of a High Court including such a Court in a Federated State, in the discharge of his duties.\* Further if the Governor in his discretion certifies that the discussion of a Bill in the Provincial Legislature or of any clause or amendment to that Bill would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part of the Province, he may in his discretion direct that no proceedings shall be taken in relation to that particular Bill, clause or amendment; and such a direction must be obeyed.† It is provided in the Instrument of Instructions to the Governor that the above-mentioned power is not to be exercised unless, in the judgment of the Governor, the public discussion of the Bill would itself endanger peace and tranquillity.‡ It is also provided that unless the Governor-General in his discretion gives his previous sanction, there shall not be introduced in the Provincial Legislature any Bill or amendment which repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India, or any Governor-General's Act, or any Ordinance promulgated by the Governor-General in his discretion, or affects matters regarding which the Governor-General is required to act in his discretion, or affects the procedure for criminal proceedings in which European British subjects are concerned.§ Further, unless the Governor in his discretion gives his previous sanction, there can not be moved or introduced any Bill or amendment in the Provincial Legislature which repeals or is repugnant to any Governor's Act or any Ordinance promulgated by the Governor in his discretion, or repeals, amends, or affects any Act relating to any Police force.||

Moreover a Bill which proposes to impose or to increase any tax, or to regulate the borrowing of money or to give any guarantee with respect to any financial obligations of the Province, or to declare any expenditure to be charged on the revenues of the Province, or to increase the amount of such expenditure cannot be introduced in the Legislature except on the recommendation of the Governor.¶ And such a Bill cannot be introduced in the Legislative Council.

The Governors are directed in the Instrument of Instructions not to assent

\* Sec. 86 (1) † Sec. 86 (2). ‡ Para. § Sec. 108. || Sec. 108. ¶ Sec. 82.

in the name of His Majesty but reserve for the consideration of the Governor-General any Bill which repeals or is repugnant to the provisions of any Act of Parliament extending to British India, or any Bill which in his opinion would, if it became law, derogate from the powers of the High Court so as to endanger the position of that Court under the Act, or any Bill which would alter the character of the Permanent Settlement, or any Bill regarding which he feels doubt whether it does or does not offend against the provisions with respect to discrimination regarding British subjects and British trading interests in India.\*

Lastly, the power of Parliament to make laws for India or any part of India remains in tact. The Provincial Legislature, like the Federal Legislature, is not empowered to make any law affecting the Sovereign, or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, the Naval Discipline Act or the Law of Prize or of Prize Courts. It is also not empowered, except if expressly permitted by the Act, to make any law amending any provision of this Act or any Order in Council, or any rules made under this Act by the Secretary of State or by the Governor-General or a Governor in his discretion or in the exercise of his individual judgment; nor can it make any law, except if expressly permitted to do so by the Act, derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.†

The provisions with respect to discrimination against British subjects domiciled in the United Kingdom, companies incorporated in the United Kingdom, and ships and air craft registered in the United Kingdom regarding the right of entry and trade, and subsidies, etc., also apply to the Provincial Legislatures. The provisions regarding professional and technical qualifications and medical qualifications apply to the Provincial legislatures in the same way as they apply to the Federal Legislature.‡ Like the Governor-General, the Provincial Governors have been instructed in the Instrument of Instructions to differ from their Ministers, if in their individual judgment, the advice of the Ministers would have the effect of discrimination even though it is not in conflict with any specific provision of the Act.§

Certain Bills to be reserved for the signification of His Majesty's pleasure

The power of Parliament to make law

Further Restrictions

Provisions in respect of discrimination

The Instrument of Instructions

Introduction of Bills	<p><b>General Procedure—Legislative.</b>—It is provided that a Bill, other than a Finance Bill, may originate in either Chamber of the Legislature of a Province, where a Legislative Council exists.* A Bill is not deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers without amendments or with such amendments only as may be agreed to by both the Chambers.† A Bill pending in the Provincial Legislature does not lapse by reason of the prorogation of the Chamber or Chambers. A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly of that Province does not lapse on a dissolution of the Assembly. A Bill, which is pending in the Provincial Legislative Assembly, or having been passed by it is pending in the Provincial Legislative Council lapses on a dissolution of the Assembly.‡ The Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating or voting on a Bill, if after it has been passed by the Legislative Assembly and has been transmitted to the Legislative Council, is not presented to the Governor for his assent before the expiry of twelve months from the date of the reception of the Bill by the Council. If, however, the Bill relates to finance or affects the discharge of any of the Governor's Special Responsibilities, he may summon in his discretion the Chambers to meet in a joint sitting even before the expiry of the period of twelve months. In such joint sittings, a Bill with such amendments as are agreed to, is deemed to have passed by both the Chambers, if it is passed by a majority of the total number of members of both the Chambers present and voting. At such joint sittings only such amendments can be made which are made necessary by the delay in the passage of the Bill, unless it has been passed by the Legislative Council with amendments and returned to the Legislative Assembly. If the Bill has been so passed and returned by the Legislative Council, only such amendments can be proposed which are relevant to the matters with respect to which the Chambers have not agreed. The decision of the person presiding over such a joint sitting as to the admissibility of the amendments is final §</p>
Passing of Bills	
Joint-sitting	

\* Sec. 73. † Sec. 74 (1). ‡ Sec. 73. § Sec. 74. A joint session of the two Houses was recently held in the United Provinces to consider the Court Fees Amendment Act, which was passed by the Legislative Assembly but was rejected by the Council. The Act was passed in the joint sitting because the Congress Party com-

When a Bill has been passed by the Provincial Legislative Assembly or by both the Provincial Chambers where they exist, it is to be presented to the Governor, who in his discretion can declare his assent to it in His Majesty's name, or can withhold his assent, or can reserve it for the consideration of the Governor-General. He may in his discretion return the Bill with a message that the whole of it or some of its provisions should be reconsidered by the Provincial Chambers or that the latter should consider the desirability of introducing any such amendments as he may recommend in his message. When a Bill is so returned, the Chamber or Chambers must reconsider it as desired.\* A Bill, which is reserved by a Governor for the consideration of the Governor-General, may be assented to in his discretion by the Governor-General in his Majesty's name or may be refused assent or may be reserved for the signification of His Majesty's pleasure. The Governor-General may also direct the Governor to return the Bill to the Provincial Chamber or Chambers together with a message similar to one which the Governor has a right to send. When a Bill is so returned, the Chamber or Chambers must reconsider it accordingly, and if it is again passed by them with or without amendment, it is to be presented again to the Governor-General for his consideration.† A Bill, which is reserved for the signification of His Majesty's pleasure, cannot become an Act of the Provincial Legislature, unless and until the Governor makes known by public notification within twelve months from the day on which that Bill was presented to the Governor that His Majesty has given his assent to the Bill. Any Provincial Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent. When any Act is so disallowed the Governor must at once make the disallowance known by public notification, and from that date the Act is to be considered void.‡

**Procedure in Financial matters.** In every financial year, the Governor is to cause to be laid before the Chamber or the Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, called the "Annual Financial Statement." The estimated expenditure in the statement is to show separately the sums required

Assent to  
Bills

Bills reserv-  
ed for con-  
sideration

Power of  
the Crown to  
disallow Acts

Annual  
Financial  
Statement

\* Sec. 75. † Sec. 76. ‡ Sec. 77.

to meet expenditure charged upon the revenue of the Province and the sums required to meet other expenditure from the revenues of the Province. The expenditure on the revenue account is to be distinguished from the other expenditure and the sums, if any, included solely because the Governor has directed their inclusion as being necessary for the proper discharge of any of his Special Responsibilities are also to be indicated. The expenditure charged on the revenues of the Province is not subject to the vote of the Legislature, while the other expenditure is subject to its vote. Any question whether any proposed expenditure is charged on the revenues of the Province is to be decided by the Governor in his discretion. The following expenditure is charged on the revenues of the Province:—

Expenditure  
charged on  
the revenues  
of the Pro-  
vince

(a) the salaries and the allowances of the Governor and other expenditure relating to his office for which provision is made by Order in Council;

(b) debt charges for which the Province is liable, including interest, sinking fund and redemption charges, expenditure relating to the raising of loans, and the service and redemption of debt;

(c) salaries and allowances of the Ministers and the Advocate-General;

(d) salaries and allowances of the High Court Judges;

(e) expenditure connected with the administration of Excluded Areas;

(f) any sum required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by the Constitution Act, or any Act of the Provincial Legislature to be charged on the revenues of the Province.\*

Not subject  
to the vote  
of the Legis-  
lature

The charged expenditure is not to be submitted to the vote of the Legislative Assembly, or of the Council, where it exists, but can be discussed in the Legislature except expenditure relating to the salary and allowance of the Governor and the expenditure of his office.† The other expenditure that is not charged on the revenues of the Province is to be submitted in the form of demands for grants to the Legislative Assembly which has the power to assent, or to refuse to assent to any demand, or reduce the amount of any demand.†

Demands for  
grants

No demand for a grant can be made except on the recommendation of the Governor, who is the Head of

\* Sec. 78, † Sec. 79.

the Executive.\* This means that the Council of Ministers cannot themselves approach the House for the purpose without the concurrence of the Governor. If strictly enforced, this may mean that the Governor must know how the Ministers propose to spend money which they are asking for. Thus all reforms involving expenditure can only be introduced with his previous sanction given in this indirect way. But it must be admitted that this procedure is in conformity with the procedure followed in certain countries, including the United Kingdom.

Recommendation of the Governor

After the voting on the demands, the Governor is to authenticate by signature a Schedule, specifying the grants made by the Assembly and the sums charged on the revenues of the Province, but not exceeding the sums shown in the original statement laid before the Chamber or Chambers. But if the Governor thinks that the refusal or reduction of any grant by the Assembly affects the due discharge of any of his Special Responsibilities, he may include in the Schedule any additional amount not exceeding the amount of the rejected demand or the reduction. This "Authenticated Schedule" is laid before the Assembly but is not open to discussion or vote in the Legislature. No expenditure from the revenues of the Province is authorised unless it is specified in this Authenticated Schedule.† If in any financial year, further expenditure from the revenues of the Province becomes necessary, the Governor is to cause to be laid before the Chamber or Chambers a "Supplementary Statement" of the estimated expenditure, and the same procedure as applied to the original "Statement" also applies to it. It shall be noticed here that unlike the United Kingdom, there is no annual Appropriation Act in India, and a resolution of the Legislature approving a demand for grant is sufficient authority for the appropriation.‡

Authentication of the Schedule of Authorised Expenditure

Supplementary Statement of Expenditure

The Provincial Legislature cannot consider, except on the recommendation of the Governor, a Bill or amendment which imposes or increases any tax, regulates the borrowing of money, or giving of any guarantee by the Province, or amends the law regarding any financial obligation of the Province, or declares any expenditure to be charged on the revenues of the Province, or increases the amount of any charged

Special provisions in respect of Financial Bills

\* Sec. 79. † Sec. 80 ‡ Sec. 81.



expenditure. A Bill, however, is not considered to be doing anything mentioned above if it provides for the imposition of fines or any other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered. A Bill, whose enactment and enforcement involves expenditure from the revenues of the Province, cannot be passed by a Chamber unless its consideration has been recommended to the Chamber by the Governor.\*

Educational  
grants for  
the Euro-  
peans and  
the Anglo-  
Indians

Special provision† has been made with respect to educational grants for the Anglo-Indian and the European communities. It is in the nature of a sort of safeguard, but this is in addition to the other safeguards secured to all the minorities by reason of the Governor's Special Responsibility to protect the legitimate interests of all minorities, the reservation of seats in the Legislature, and also regarding appointments in the Railway, Customs, Postal and Telegraph Services. In the First Schedule to the Act, a European is taken to mean a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India. An Anglo-Indian is taken to be a person whose father or any of whose other male progenitors in the male line is or was of European descent, but who is a native of India. The special provisions in respect of these communities stipulate that if in the last complete financial year, before the introduction of the Provincial Autonomy, a grant for the benefit of the Anglo-Indian and European Communities or either of them was included in the grants made in the Province for education, then in each subsequent financial year a grant shall be made for the benefit of these communities, which shall not be less than the average of the grants made for their benefit in the ten financial years ending on 31st March, 1933, unless the Provincial Legislative Assembly decides to the contrary by a majority of at least three-fourths of the members of the Assembly. The above is subject to the provision that if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province for the ten financial years as mentioned above, then the grant made for the benefit of these communities need not exceed the fraction which the total grant for the year forms of the average of the grants for the ten financial years as

\* Sec. 82. † Sec. 83.



mentioned above. In the grants thus made, grants for capital purposes are to be included. These provisions are to cease to have effect in a Province, if at any time the Provincial Legislative Assembly decides to that effect by a majority of at least three-fourths of the members of the Assembly.\*

**Rules for the Conduct of Business.**—The Chambers of the Provincial Legislature may make rules for regulating their procedure and the conduct of their business, subject to the provisions of this Act. The Governor in his discretion is empowered to make rules in respect of the Legislative Assembly or the Legislative Council for regulating the procedure of and the conduct of the business in the Chamber regarding any matter which affects the discharge of his functions to be performed in his discretion or by the exercise of his individual judgment; for securing the timely completion of financial business; for prohibiting the discussion of or the asking of questions on any matter connected with any Indian State, unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent for the discussion or the asking of the questions; for prohibiting, except with the consent of the Governor, to be given in his discretion, the discussion of or the asking of questions on any matter connected with the relations between His Majesty or the Governor-General and any foreign State or Prince; or on matters connected with the Tribal Areas or arising out of or affecting the administration of Excluded Area, except their expenditure, or in respect of the personal conduct of the Ruler of any Indian State or of a member of the Ruling family of any Indian State. If any rule so made by the Governor is inconsistent with any rule made by the Legislature, the rule made by the Governor prevails. In a Province, where there is a Legislative Council, the Governor after consulting the Speaker of the Assembly and the President of the Council may make rules regarding procedure with respect to joint sittings of and communications between the two Chambers. It is laid down that until rules are made as described above, the rules of procedure and standing orders with respect to the Legislative Council of the

Rules may be made by the Chambers

Governor's power to make rules in respect of certain matters

Previous Rules to apply in the absence of the new Rules

\* Sec. 83.

Province in force before the introduction of the Provincial Part of the Act, shall apply to the Legislature of the Province with modifications and adaptations that may be made by the Governor in his discretion. The Punjab Assembly has formulated a new set of rules in pursuance of this provision. They have been brought in to force only recently. At a joint sitting of the two Chambers, the President of the Legislative Council, or in his absence, any person determined by rules of procedure presides.\*

President of  
the joint-  
Sittings

It is provided that all proceedings in the Legislature of the Province should be conducted in the English language, but rules of procedure are to provide for enabling persons unacquainted, or not sufficiently acquainted with the English Language to use another language.† The hardship that this provision causes is becoming more and more apparent with the actual working of the Provincial Legislatures. The subject has already been discussed in the foregoing pages.‡

English to  
be the offi-  
cial language

**Legislative Powers of the Governor.**—The Governor, like the Governor-General in the federal sphere, is an integral part of the Provincial Legislature. He has to perform certain special functions, and has therefore been armed with certain special powers to deal with different situations that might arise. He has got such powers in the executive and the financial spheres, which have been described above. The Act also vests him with certain special powers in the Legislative sphere. Under the provisions of the Act, he can issue Ordinances, and promulgate Governor's Acts. These Ordinances are of two kinds. He can issue an Ordinance, when the Legislature of a Province is not in session, and he is satisfied that circumstances exist which render it necessary for him to take immediate action. He is to exercise his individual judgment, if the Ordinance to be issued is one, which as a Bill would have required his own previous sanction or of the Governor-General. Further, if any such Ordinance as a Bill would have required the Governor-General's previous sanction for its introduction in the Provincial Legislature, or which he would have reserved as a Bill for the consideration of the Governor-General, it cannot be promulgated without instructions from the Governor-General, acting in his discretion. This Ordinance has the same force and effect as an Act of the Provincial

Powers to  
issue Ordi-  
nances

Power of the  
Governor to  
promulgate  
Ordinances  
during the  
recess of the  
Legislature

\* Sec. 84. † Sec. 85. ‡ See pp. 85-86.

Legislature passed in the usual way, but it must be laid before the Provincial Legislature and ceases to have effect after the expiration of six weeks from the reassembly of the Legislature, or if, before the expiry of that period, a resolution disapproving it is passed by the Legislative Assembly and is agreed to by the Legislative Council where it exists. It is subject to the power of His Majesty to disallow Acts and can be withdrawn at any time by the Governor. It is void, if it makes any provision which is not valid, if enacted in any Act of the Provincial Legislature.\*

Besides, the Governor can issue another kind of Ordinance at any time with respect to certain subjects touching his functions to be discharged in his discretion or by the exercise of his individual judgment, if the circumstances make it necessary. Such an Ordinance can continue to operate for not more than six months as may be specified, but can be extended for a further period, not exceeding six months, by a subsequent Ordinance. This Ordinance has the same force and effect as an Act of the Provincial Legislature passed in the ordinary way, but can be disallowed by His Majesty like an ordinary Act, and can be withdrawn at any time by the Governor. But if it is an Ordinance extending a previous Ordinance for a further period, it must be communicated forthwith to the Secretary of State through the Governor-General; and the Secretary of State is required to place it before each House of Parliament. Such an Ordinance is not valid if it makes any provision which would not be valid if enacted in an Act of the Provincial Legislature. For the purposes of the provisions of the Act in respect of the repugnancy of an Act of the Provincial Legislature to an Act of the Federal Legislature, such an Ordinance shall be considered to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.†

Promulga-  
tion of  
Ordinances  
at any time

The Governor is to exercise his powers for the purpose in his discretion; but he is to exercise these powers only with the concurrence of the Governor-General in his discretion. But if it appears to the Governor that it is not practicable to obtain in time the concurrence of the Governor-General, he may promulgate an Ordinance without

Concurrence  
of the  
Governor-  
General

\* Sec. 88. † Sec. 89.

his concurrence; but in this case the Governor-General may direct, in his discretion, the Governor to withdraw the Ordinance, which shall be withdrawn accordingly.

Power of the  
Governor to  
enact Acts

In addition to the power of issuing Ordinances of the above types, the Governor has been vested with powers to enact Acts, called the Governor's Acts under certain circumstances. If the Governor thinks that for the purpose of discharging the functions satisfactorily in respect of those matters subject to his discretion or to his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or the Chambers of the Legislature, explain the circumstances which make such legislation necessary, and then enact forthwith a Governor's Act containing the necessary provisions, or attach to his message a draft of the Bill which he considers necessary. In the latter case he may enact the Bill as a Governor's Act, either in the same form or with necessary amendments after the expiry of one month, but before enacting the Act he shall consider any address presented to him by the Chamber or the Chambers or any amendments suggested by them within the stipulated period. Such a Governor's Act has the same force and effect as an ordinary Act of the Provincial Legislature, is subject to disallowance as an ordinary Act, and is void if it enacts provisions which would not be valid if enacted in an ordinary Act of the Legislature. For the purposes of the provisions contained in this Act in respect of the repugnancy of a Provincial Act to that of a Federal Act, such a Governor's Act is to be considered as an Act reserved for the consideration of the Governor-General and assented to by him. Every such Governor's Act is to be communicated forthwith through the Governor-General to the Secretary of State, and must be laid before each House of Parliament by the latter. The Governor is to perform the functions in connection with the Governor's Act in his discretion, but he is not to exercise any of his powers in this connection except with the concurrence of the Governor-General in his discretion.\*

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\* Sec. 90.

### Provisions in Case of Failure of the Constitutional Machinery.—

Like the Governor-General in the federal sphere, the Governor in the provincial sphere has been assigned special powers to cope with a contingency arising out of the failure or break-up of the constitutional machinery. It is provided that if at any time, the Governor is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of the Act of 1935, he may issue a Proclamation, declaring that the functions, to the extent as may be specified, shall be exercised by him in his discretion, and he may thereby assume to himself all or any of the powers of any Provincial body or authority except the High Court, whose powers cannot be assumed by the Governor under the Act. Such a Proclamation may be revoked or varied by a subsequent Proclamation. But such a Proclamation must be communicated forthwith to the Secretary of State, who shall lay it before each House of Parliament. Unless it is a Proclamation revoking a previous Proclamation, it shall cease to operate at the expiration of six months. This is subject to the provision that, if and so often as both the Houses of Parliament approve its continuance by a resolution, it shall remain in force for a further period of twelve months. Under Parliamentary sanction such a Proclamation can remain in force for not more than three years. Any laws made by the Governor, when such a Proclamation is in force, has effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the appropriate Legislature. Such a law is included when a reference is made in the Constitution Act to Provincial laws. The Governor is to exercise his functions in this connection in his discretion, but no Proclamation can be made by the Governor under this provision without the concurrence of the Governor-General in his discretion.\*

Power to  
issue  
Proclama-  
tions

To be  
communi-  
cated to the  
Secretary  
of State

Duration

It shall be noticed that the powers of the Governors and the Governor-General are similar in their respective spheres and provide against similar contingencies. The remarks that have already been made above† in that connection also apply in a

\* Sec. 93. † Pages 121-125.

Encroachment on the spirit of Provincial Autonomy

Special circumstances prevalent in India

Good Work

No use of Special Powers

general way to the powers assigned to the Governors. As has been pointed out above, in certain cases these powers may be necessary, but they certainly militate against the spirit of Provincial Autonomy and the principle of the responsibility of the Executive to the Legislature. In the ultimate resort the popular Provincial Legislatures and the Provincial Councils of Ministers can be reduced to nullities by the exercise of these powers by the Governors. Generally speaking, some such safe-guards are also found in the Constitutions of the other countries to meet with emergencies, but there these powers are generally exercised on the advice of the responsible Ministers. In the case of the Indian Provinces, however, the Governors can ignore their Ministers altogether if they like, which is certainly very objectionable from the constitutional point of view, but perhaps it is necessary on account of the special circumstances prevalent in India, arising out of mutual distrust between the forces of Indian nationalism and of British imperialism. The powers regarding the break-down of the constitutional machinery assigned to the Governors are perhaps necessary in view of a real danger of the break-down or the wrecking of the Constitution which was till recently the declared policy of a very influential political party in the country. But as is already pointed out, these provisions cannot provide against the danger of the constitutional break-down for more than three years during which time a solution of the crisis may or may not be found.

**Actual Working.**—The actual working of the Provincial part of the Act has dispelled many fears and forebodings. As a result of the understanding or the gentleman's agreement, as Mahatma Gandhi once put it, that subsists between the Governors and the Ministers, the parties seem to understand their proper spheres of work. The Provincial Legislatures have shown a surprising sense of responsibility and a desire to do good to the people while remaining within the four corners of the Constitution. Many useful laws have been passed in the different Provinces; and no attempt has been made so far to wreck the Constitution. The Governors have not been called upon to use their special powers in respect of legislation. No Ordinance has so far been issued by any Provincial Governor

against the wishes of the Ministers, nor has any Governor's Act been enacted in any Province. Only one Ordinance has so far been issued, and this was done by the Governor of Bengal with the concurrence of his Ministers in order to enforce temporarily a Tenancy Bill passed by the Legislature before giving final assent to it. It is, therefore, hoped that these special powers of the Governors will fall in disuse in course of time so as to allow complete scope to the development and growth of the Provincial Autonomy.

## APPENDIX VI

### Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organization of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.
2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.
5. Public debt of the Province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Provincial pensions, that is to say pensions payable by the Province or out of Provincial revenues.
8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.
9. Compulsory acquisition of land.
10. Libraries, museums and other similar institutions controlled or financed by the Province.
11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.
12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly; and if there is a Legislative Council, of the President and Deputy President; the salaries, and privileges of the members of the Provincial Legislature and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.
13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
14. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.
15. Pilgrimages, other than pilgrimages to places beyond India.
16. Burials and burial grounds.
17. Education.
18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in the Federal List; minor railways subject to the provisions of the Federal List with respect to such railways; municipal tramways; ropeways, inland waterways and traffic thereon; subject to the provisions of Con-



current Legislative List with regard to such waterways ; ports subjects to the provisions in Federal List with regard to major ports ; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards ; encumbered and attached estates ; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of Federal List with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province ; markets and fairs ; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods : development of industries, subject to the provisions in Federal List with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods ; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of Federal List and, as respects poisons and dangerous drugs, to the provisions of Concurrent Legislative List.

32. Relief of the poor, unemployment.

33. The incorporation, regulation, and winding up of corporations other than corporations specified in the Federal List ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.

34. Charities and charitable institutions ; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
- 41. Taxes on agricultural income.
- 42. Taxes on lands and buildings, hearths and windows.
- 43. Duties in respect of succession to agricultural land.
- 44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.
- 45. Capitation taxes.
- 46. Taxes on professions, trades, callings and employments.
- 47. Taxes on animals and boats.
- 48. Taxes on the sale of goods and on advertisements.
- 49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
- 50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
- 51. The rates of stamp duty in respect of documents other than those specified in the provisions of the Federal List with regard to rates of stamp duty.
- 52. Dues on passengers and goods carried on inland waterways.
- 53. Tolls.
- 54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.\*

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\* In the Government of India Act Amendment Bill which has been introduced in the House of Lords, certain additions are proposed to be made to the subjects on the Provincial List Entry No.17 above is sought to be enlarged as Education including Universities other than the Benares Hindu University and the Aligarh Muslim University, which are Federal subjects. Two more taxes are proposed to be added to the Provincial List, *e.g.*, taxes on vehicles suitable for use on roads, whether mechanically propelled or not, and taxes on the consumption or sale of electricity. A new clause is proposed to ve exemptions from taxes on electricity.

## CHAPTER IX

### THE EXCLUDED AREAS AND THE PARTIALLY EXCLUDED AREAS

The Backward Areas; General Principles observed; Declaration of the Excluded and the Partially Excluded Areas; the Excluded Areas; The Partially Excluded Areas; Changes in the Extent and Nature of these Areas; Administration of the Excluded Areas and the Partially Excluded Areas.

**The Backward Areas.**—The Constitution Act makes provision for the declaration of certain areas in the Provinces as “Wholly Excluded Areas,” and “Partially Excluded Areas.” As far as the Act is concerned, they mean such areas as His Majesty may by Order in Council declare to be such.\* These areas are certain backward areas in the Provinces, whose transfer to responsible provincial control is not considered safe for one reason or another. The Act of 1919 treated certain areas as “Backward Tracts,” which were excluded from the operation of the Reforms granted by that Act. Under the provisions of that Act, the Governor-General in Council could declare any territory in British India to be a “Backward Tract” and could, with the sanction by notification of the Secretary of State, direct that the Government of India Act 1919 shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.† When such a notification had been issued, the Governor-General could direct that any Act of the Indian Legislature was not to apply to the territory in question or was to apply to it subject to the prescribed qualifications and modifications. The Governor-General could empower the local Governors to give similar directions in respect of Provincial laws. Thus these “Backward Tracts” were more or less under the executive and legislative control of the Governor-General in Council and the Provincial Governors. The Simon Commission changed the name of these “Backward Tracts” to “Excluded Areas,” and recommended that the administration of such Areas should vest with the Central Government. The J.P.C., however, proposed that they should remain

The Excluded Areas;  
and the  
Partially Ex-  
cluded Areas

Position  
under the  
Act of 1919

Simon Com-  
mission's  
Proposal

J. P. Com-  
mittee's  
Proposal

\* Sec. 91 (1). † Sec. 52 (a, 2) Act of 1919.

with the Provinces, but should constitute the Special Responsibility of the Governors as far as the "Partially Excluded Areas" are concerned, while the "Excluded Areas" should be reserved to his discretion, beyond the advice of his Ministers. The Committee observed :

"It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an "Excluded Area" or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration ; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion, to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. . . . We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to or the framing of Regulations for, Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers, the decisions taken in each case being of course, subject to the Governor's Special Responsibility for Partially Excluded Areas, that is to say, being subject to his rights to differ from the proposals of his Ministers, if he thinks fit."\*

**General Principles Observed.**—Thus the Act provides for the Excluded Areas and the Partially Excluded Areas. The general principles followed in declaring an Area as a wholly Excluded Area were that there was an enclave or a definite tract of country inhabited by a compact aboriginal population, or that these areas were border tracts in certain Provinces, or were areas which were isolated from the normal life and administration of the Province on account of their geographical situation. Where the aboriginal population was mixed up with the rest of the agricultural communities but were in sufficient numbers, the area was declared to be Partially Excluded Area. Explaining the principles regarding the selection of these Areas, Dr. J. H. Hutton said :—

Aboriginal  
Population ;  
Border  
Tracts ;  
Isolation

Dr. J. H.  
Hutton's  
Explanation

"Exclusion was not based in the case of Assam on the ground of Educational Backwardness. The reason was that there was a clash of interest between hill and plains people and the former feared that the majority vote would seriously affect their economic interest in the matter of legislation relating to land revenue, forests and fisheries.

As regards the islands of South India, no elected representative would be able to keep in touch with a constituency 125 to 250 miles in the sea, where even the Collector paid a visit once in two years

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\* Para 144.

The language and dialect difficulties were enormous. In some villages the language spoken differed even from street to street.

Further, to legislate against the primitive customs of hill tribes was to court rebellion which in such areas was always feared and proved very costly.\*

The Areas have been selected with the idea of over-excluding rather than under-excluding, and therefore include more extensive territory than under the Act of 1919. Provision however is made for declaring the Wholly Excluded Area to be Partially Excluded Area, and to bring the Partially Excluded Area under the control of normal administrative machinery. Indian opinion has expressed itself, generally speaking, against declaring extensive areas as Excluded Areas, or as Partially Excluded Areas, and particularly it seems to suggest that such Areas ought to have been decreased rather than increased under the new Act. It is a sad commentary of the system of government established in these Areas that the tribal people living in these Areas are at much the same stage of civilization to-day as they were some 150 years ago when they were brought under the rule of the British. In the words of Dr. Z. A. Ahmad.

Over-exclusion

Indian opinion

" Nearly 15 million inhabitants of India have been preserved in a state of semibarbarism, denied education, medical facilities and other amenities of civilised life so that they may never develop a consciousness of their political and economic rights and learn to struggle in an organized and systematic manner against their innumerable wrongs."†

One may or may not agree with this opinion, and one may also accept that the problem of these backward tribal areas is not very simple. Perhaps it is not possible to establish the modern machinery of government and laws among these people who do not understand them. But the question is for how long are these relics of the pre-historic times to be preserved? Why should these 15 million inhabitants of India be condemned to a life, which is to say the least, barbaric? Why should they be shut out from the normal life of the people of the country? If no satisfactory answer can be given to any of these questions, it is clear that it is the humane and patriotic duty of Indians of the advanced classes to modernize them and carry the blessings of civilization to them.

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\* Speech in the Central Assembly. † Congress Political and Economic Studies—No. 4.

If it is so, the question is how can this be done best, whether by keeping them under irresponsible, autocratic control or by bringing them under the jurisdiction of the popular Ministers who are, at least, the countrymen of these people? It may not be possible to establish full responsible government among these tribal people, yet earnest attempts should be made to modernise them and preferably through Indian Ministers who are likely to take greater interest in their welfare than the members of irresponsible bureaucracy.

It has been suggested that these Areas have been excluded from the normal control of the responsible Ministers not because they are educationally or politically backward, but with the idea of controlling the mineral and other resources of these areas in the interest of foreign capital. The Indian National Congress at its annual session at Faizpur declared itself against this through the following resolution :

" This Congress is of opinion that the creation of " Excluded " and " Partially Excluded Areas " and Chief Commissioner's Provinces including British Baluchistan, from the 1st January 1937, and covering the area of 207,900 square miles and inhabited by 13 million people is yet another attempt to divide the people of India into different groups with unjustifiable and discriminatory treatment and to obstruct the growth of uniform democratic institutions in the country.

" This Congress is further of opinion that the separation of these " Excluded " and " Partially Excluded Areas " is intended to leave a larger control of disposition and exploitation of the mineral and forest wealth in those Areas and keep the inhabitants of those Area apart from the rest of India for their easier exploitation and suppression.

" This Congress holds that the same level of democratic and self-governing institutions should be applicable to all parts of India without any distinction."

Recently, of the Provincial Legislatures, the Bihar Legislature took the lead in condemning this system through a resolution. The question deserves greater attention of the leaders of thought and opinion in the country.

It is hoped that the successful working of the self-government in the Provinces will also affect these Areas and that in the near future they shall also be brought in line with the other advanced parts of the Provinces.

**Declaration of the Excluded and the Partially Excluded Areas**—It is provided in the Act that His Majesty may at any time by Order in Council declare certain areas to be Excluded Areas or Partially Excluded Areas.\* The Secretary of State was to place the draft of such an Order, which it is proposed to recommend His Majesty to make, before Parliament, within six months from the passing of this Act. Such an Order in Council was made on the 3rd of March, 1936, and the following areas were declared Excluded Areas and Partially Excluded Areas.

Order in  
Council

#### The Excluded Areas.

**Madras.** The Laccadive Islands (including Minicoy) and the Amindivi Islands.

**Bengal.** The Chittagong Hill Tracts.

**The Punjab.** Spiti and Lahaul in the Kangra District.

**Assam.** The North East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.

The Naga Hills District.

The Lushai Hills District.

The North Cachar Hills Sub-division of the Cachar District.

**The North-West Frontier Province.** Upper Tanawal in the Hazara District.

#### The Partially Excluded Areas

**Madras.** The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

**Bombay.** In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal; and the villages belonging to the following Mehwassi Chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forests areas of the East Khandesh District.

The Kalvan Taluk and Peint Petha of Nasik District.

The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thanna District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahals District.

**Bengal.** The Darjeeling District.

The Dewanganj, Sribardi, Nalitabari, Haluaghat, Durgapur and Kalmakanda police stations of Mymensingh District.

**The United Provinces.** The Janusar-Bawar pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur range.

\* Sec, 91,

**Bihar.** The Chota Nagpur Division.  
The Santal Parganas District.

**The Central Provinces and Berar.** In the Chanda District, the Abiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Fai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra ; Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki.

Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

#### **Assam.**

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment.

#### **Orissa.**

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

#### **Changes in the Extent and Nature of these Areas.—**

His  
Majesty's  
Powers

His Majesty is empowered at any time to direct by an Order in Council that the whole or any specified part of an Excluded Area shall become, or become part of, a Partially Excluded Area; or that the whole or any specified part of a Partially Excluded Area shall cease to be a Partially Excluded Area or a part of such an Area. He can also alter any Excluded or Partially Excluded Area but only by way of rectification of boundaries; or he can declare any territory not previously included in any Province to be, or to form a part of, an Excluded Area or a Partially Excluded Area in the case of an alteration of the boundaries of a Province or the creation of a new Province. Any such Order may contain the necessary incidental and cosequential provisions. But the Order in Council made on March 3rd, 1936, which has declared certain



areas to be Excluded Areas and Partially Excluded Areas, cannot be varied by any subsequent Order except as described above.\*

It shall be noticed that though any area could be declared as Excluded and Partially Excluded Area in the Order in Council which has already been issued, no further additions can subsequently be made. His Majesty, however, can change the status of the Excluded Area to that of a Partially Excluded Area and make the Partially Excluded Area subject to the normal administrative machinery. He can alter the boundaries of such Areas only by way of rectification and can declare any territory not previously included in the list of Excluded Areas or the Partially Excluded Areas to be such only when new Provinces are created or the boundaries of a Province are altered, but not otherwise.

Summary

**Administration of the Excluded Areas and the Partially Excluded Areas.**—The executive authority of a Province extends to the Excluded and the Partially Excluded Areas in that Province. But no Act of the Federal Legislature or of the Provincial Legislature applies to an Excluded Area or a Partially Excluded Area, unless the Governor directs that by Public Notification. In doing that the Governor may direct that a particular Act shall apply to the Area as a whole or to a part of it subject to such exceptions or modifications as he thinks fit. The Governor may himself make Regulations for the peace and good government of any Excluded or Partially Excluded Area in a Province. These Regulations may repeal or amend any Federal or Provincial law or any existing Indian law which may be applicable to the Area in question. These Regulations, however, are to be submitted forthwith to the Governor-General and can not have effect until assented to by him in his discretion. They are also subject to the power of disallowance of His Majesty.†

Federal and Provincial laws not applicable automatically

Power of the Governor to make Regulations

The Governor is to exercise his functions regarding Excluded Areas in his discretion, which means not subject to the advice of his Ministers. His functions regarding Partially Excluded Areas are to be performed by him by the exercise of his individual judgment, which means subject to the advice of the Ministers, though that advice may be ignored by him.

Exercise of his powers by the Governor

\* Sec. 91. † Sec. 92.

## CHAPTER X

### THE CHIEF COMMISSIONERS' PROVINCES

The Governors' Provinces and the Chief Commissioners' Provinces, British Baluchistan ; the Andaman and Nicobar Islands ; Coorg ; General ; Panth Piploda ; Aden.

**The Governors' Provinces and the Chief Commissioners' Provinces.**—There are two kinds of Provinces under the Government of India Act, 1919—the Governors' Provinces and the Chief Commissioners' Provinces. As has been noticed above, the Governors' Provinces as well as the Chief Commissioners' Provinces are to be the units of the Federation of India along with those States that might accede to the Federation. Provincial Autonomy is to be established in the Governors' Provinces under the provisions of the Act, which means that these Provinces shall be more or less self-contained legislative and administrative units ; but the Chief Commissioners' Provinces are to stand on altogether different footing. Under the Act, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind are recognized as Governors' Provinces. The Chief Commissioners' Provinces include British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and the area known as Panth Piploda. Other Chief Commissioners' Provinces may be created under this Act. Aden has been separated from India under the Provisions of the Act.

Units of the  
Federation

The Govern-  
ors' Pro-  
vinces

The Chief  
Commis-  
ioners' Pro-  
vinces

Administra-  
tion of  
Chief  
Commis-  
sioners' Pro-  
vince

The powers  
of the  
Governor-  
General

A Chief Commissioner's Province is to be administered directly by the Governor-General acting to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.\*

**British Baluchistan.**—In directing and controlling the administration of British Baluchistan, the Governor-General acts in his discretion. The executive authority of the Federation, however, extends over British Baluchistan as over other Chief Commissioners'

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\* Sec. 94.

Provinces, but no act of the Federal Legislature has application to it unless the Governor-General directs by Public Notification to be issued at his discretion, and in doing so he may provide for such exceptions and modifications as he thinks fit. He is also empowered at his discretion to make Regulations for the peace and good government of British Baluchistan. These Regulations have the same force and effect as an Act of the Federal Legislature applying to this Province and may repeal or amend any Federal law or any Indian law applicable to the Province. Such Regulations are subject to the power of His Majesty to disallow Acts passed by the Indian Legislature.\*

Making of  
Regulations

**The Andaman and Nicobar Islands.**—The Governor-General has similar powers and authority to make Regulations for the peace and good government of the Andaman and Nicobar Islands as for British Baluchistan.†

Governor-General's  
power of  
making  
Regulations

**Coorg.**—In Coorg the existing Legislative Council with its present constitution, powers, and functions, and the present arrangements respecting revenue collections and expenses is to continue without any change.‡

The existing  
Legislative  
Council to  
continue

**General.**—The rules applicable to the Governors' Provinces with respect to the police rules and crimes of violence intended to overthrow the government, and provisions relating to the non-disclosure of certain records and information have application in the Chief Commissioners' Provinces, though in their case the place of Governors and Provincial Legislatures is to be taken up by the Governor-General and the Chambers of the Federal Legislature.§

Provisions in  
respect of  
police rules  
and crimes  
of violence

Except the area known as Panth Piploda, which has been raised to the status of a Chief Commissioner's Province by the Act of 1935, the other Chief Commissioner's Provinces had the same status before the passing of the present Act. They are units in the Federation of India, but unlike the Governors' Provinces, the executive and the legislative authority (except in the case of British Baluchistan) of the Federation extends over them. This authority, it seems, is to be exercised by the Governor-General not at his discretion but on the advice of his Federal Ministers.

Subject to  
the executive  
and legisla-  
tive authority  
of the  
Federation

\* Sec. 95. † Sec. 96. ‡ Sec. 97. § Sec. 98.

This is, however, subject to the exception that the authority regarding British Baluchistan and the Andaman and Nicobar Islands is to be exercised by the Governor-General at his discretion. Regarding other areas, the Federal Legislature has powers to make laws on any subject without any restriction.

Provision for  
representa-  
tion

Delhi and Ajmer-Merwara have been given representation in the Federal Legislature. Delhi has been given the power to elect one member to a General Seat in the Council of State and two members to the Federal Assembly, one of them from a General constituency and the other from a Mohammadan constituency. Ajmer and Merwara shall return one member each to the Federal Council of State and to the Federal Assembly from the General constituency. British Baluchistan shall be represented in the Federal Legislature by two Mohammadan members, one in the Upper House and one in the Lower House.

Coorg is also given representation in the Federal Legislature by the election of one member by the Coorg Legislative Council for the Federal Assembly and one for the Council of State through a territorial constituency for the General Seat. Andaman and Nicobar Islands have not been given any representation in the Federal Legislature.

**Panth Piploda.**—It is a small area about 19 square miles in Malwa in Central India, with a population of about four thousand and revenue nearing rupees 15,000. So far the government of this area was carried on by the Political Agent at Malwa under the authority of the Agent to the Governor-General in Central India. It is held by a Chief, called Pandit, without any proprietary rights, though it is a British territory. Under this Act, it is raised to the status of a Chief Commissioner's Province.

## CHAPTER XI

### ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION, THE PROVINCES, AND THE STATES

Need for change ; Exercise of authority by the Federation and the Units ; Administration of Federal Laws ; Acquisition of land for Federal purposes ; Broadcasting ; Interference with Water Supplies ; Inter-Provincial Co-operation.

**Need for Change**—The Government of India Act, 1935 introduces a great change in the nature and structure of the government of the country both at the Centre and in the Provinces. It changes the government of the country from a unitary to a Federal basis and introduces responsible and autonomous government in the Provinces. This necessitated a complete re-adjustment of the relations between the Federal and the Provincial Governments. In the words of the J. P. C. :

From  
Unitary to  
Federal  
State

" Now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units. We are impressed by the possible dangers of a too strict interpretation of the principle of Provincial Autonomy. The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not un-affected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend the responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre."\*

J.P.C.'s  
observations

Administra-  
tive nexus  
between the  
Federation  
and the  
units

There was obviously a need for the establishment of new administrative relationship between the Federation and its constituent units, consistent with the whole scheme of government. This has been done in the Act. The J.P.C. observed :

" The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservation as may be contained in the Rulers Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal officers ;

J.P.C.'s  
observations

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\* Para 218.

Duty of  
Provincial  
Govern-  
ments to  
give effect  
to Federal  
laws

Obligation  
of units and  
Federation

Governors  
to act as  
agents of  
the Gover-  
nor-General

Power of the  
Governor-  
General to  
confer  
powers on  
the units

Payment to  
cover extra  
cost of ad-  
ministration

subject, in the case of the States, to the terms of the Ruler's Instrument of Accession ; or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government."\*

**Exercise of Authority by the Federation and the Units.**—It is provided in the Act that the executive authority of every Province and a Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature, which apply in that Province or State. But in the exercise of the executive authority of the Federation in any Province or a Federated State, regard shall be had to the interests of that Province or State.†

The Governor-General can direct any Provincial Governor to discharge, as his agent functions in relation to Tribal Areas or functions in relation to Defence, External Affairs, or Ecclesiastical Affairs as may be specified by the Governor-General. In discharging these functions the Governor shall act in his discretion.‡ Such a direction has been recently issued by the Governor-General to the North-West Frontier Province asking the latter to act as the former's agent for the discharge of his functions in respect of Tribal Areas.

**Administration of Federal Laws.**—The Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust to them or to their officers, conditionally or unconditionally, functions in respect of matters under the executive authority of the Federation. A Federal Act may confer powers and impose duties upon a Province or its officers and authorities, even in respect of matters regarding which the Provincial Legislature has no power to make laws. A Federal Act which extends to a Federated State may confer powers and impose duties upon the State or its officers or authorities, designated by the Ruler for the purpose. When the above-mentioned powers and duties are performed by a Province or a Federated State or their officers, or authorities, the Federation is to pay to them an agreed sum to cover extra costs of administration that may be incurred by the Province or the State in connection with the exercise of these powers and duties. If an agreement cannot be arrived at, the sum to be paid may be determined by an arbitrator appointed by the Chief Justice of India.§

\* Para 219. † Sec. 122. ‡ Sec. 123. § Sec 134.

Agreements may, and if it has been so provided in the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the latter or his officers of functions regarding the administration of a Federal law applying to the State. Such an agreement as referred to above shall contain provisions which would enable the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the law in question is properly administered in accordance with the policy of the Federal Government. If he is not satisfied on that point, the Governor-General, acting in his discretion, may issue such directions to the Ruler as may be necessary. Such an agreement is subject to judicial notice by all courts.\* These provisions can in actual effect limit the administrative powers of the Federal Executive in respect of the ceded subjects as far as the States are concerned, if the Rulers make a provision to that effect in the Instrument of Accession. In ordinary cases, the States by ceding certain subjects to the control of the Federation by the Instrument of Accession, cede the legislative as well as the administrative control over them to the Federation. But the provisions above mentioned are intended to provide for having agreements with big States with efficient systems of administration to be allowed to administer certain subjects by agreement with the Federation and in accordance with the policy of the Federation.

It is further provided that the executive authority of a Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, which is exercisable in the State by virtue of a Federal law applying to it. If, however, the Governor-General thinks that the Ruler of a Federated State has failed to carry out his obligations properly, regarding the executive authority of the Federation in his State, he may at his discretion issue such directions to the Ruler as he thinks fit, after considering any representation made by the Ruler in question. If there is any disagreement as to the exercise of the executive authority of the Federation in a State with respect to any matter, the question may be referred by the Federation or the Ruler to the Federal Court.†

Administra-  
tion of  
Federal laws  
in the  
Federated  
States

Issuing of  
directions

Effect of the  
provisions

The proper  
exercise of  
the executive  
authority in  
a Federated  
State

Duty of the  
Ruler of a  
Federated  
State in  
respect of  
Federal sub-  
jects

\* Sec. 125. † Sec. 128

The proper exercise of the executive authority in the Provinces

Regarding the Provinces, it is also provided that their executive authority shall be so exercised as not to impede or prejudice the exercise of the Federal executive authority, which shall extend to the giving of such directions to a Province as may be considered necessary by the Federal Government. Explaining this, the J. P. C. observed :

J.P.C.'s observations

" The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservations as may be contained in the Rulers' Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal officers, subject, in the case of the States, to the terms of the Rulers' Instrument of Accession ; or the Legislature may devolve upon the Provincial Governments or their officers, the duty of executing and administering the law on behalf of the Federal Government. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province . . . . . But, in addition to this general statement of a moral obligation, the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law, and that the manner in which the provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation which, as we said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself."\*

Duty of Provincial Governments to give effect to Federal laws

Power of giving direction

The States

Distinction between legislation in the exclusive and concurrent fields

The J.P.C., however, thought it necessary that some distinction should be drawn between legislation in the exclusive and the concurrent fields. According to it, it was much more doubtful whether the Federal Government should have power as above-mentioned in the concurrent field, because the subjects of legislation in this field will be matters which would predominantly be of Provincial interest, and the agency through which such legislation will be administered will be always exclusively a Provincial agency. But it also thought that in this field there will often be the need for securing uniformity in matters of social legislation, which must be accompanied by reasonable

\* Para. 219.



uniformity of administration. So it suggested that a distinction should be drawn between subjects in the Concurrent List, which relate generally to matters of social and economic legislation, and which relate to matters of law and order, personal rights and status. In respect of the latter kind of subjects, the Federal Government was not to be given any power of administrative control, as there could be no question of Federal directions being issued to the courts, or prosecution authorities in the Provinces. Regarding the other class of concurrent subjects, consisting mainly of the regulation of mines, trade unions, welfare of labour, industrial disputes, infectious diseases, etc., the Federal Government was to have the power of issuing directions for the enforcement of the law, but only to the extent provided by the Federal Act in question.\*

Two classes  
of concurrent  
subjects

In pursuance of this, it is provided† in the Act that the executive authority of the Federation shall extend to the giving of directions to a Province regarding carrying into execution any Act of the Federal Legislature in respect of subjects contained in Part II of the Concurrent Legislative List. But a Bill or amendment proposing to authorise the giving of any such directions shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General to be given in his discretion. The executive authority of the Federation also extends to the giving of directions to a Province regarding the construction and maintenance of the means of communications of military importance, but this does not restrict the power of the Federation to construct and maintain means of communications as part of its functions regarding the naval, military and air force works.

Control of  
the Federa-  
tion over the  
Provinces

Power of  
giving direc-  
tions

If, however, the Governor-General thinks that his directions have not been given effect to in any Province, he may in his discretion issue as orders to the Provincial Governor either the directions previously given or after necessary modifications The Governor-General's Special Responsibility for the peace or tranquillity of the whole or a part of India may require him to issue orders to the Provinces, and it is provided that without prejudice to his power regarding the issuing of orders as mentioned above, he may in his discretion

Issuing of  
Orders

Special Res-  
ponsibility  
for the peace  
and tran-  
quillity of  
India

\* Para 220. † Sec. 126.

issue orders at any time to a Provincial Governor as to the manner in which the executive authority of the Province is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any of its parts.

Regarding this the J. P. C. observed :

J. P. C.'s  
observations

Enforcement  
of Federal  
Govern-  
ment's direc-  
tion

" We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of Federal Ministers ; and, where a conflict of this kind arises between the Federal Government and the Government of a Province any directions by the Governor-General which require the Governor to dissent from, or to over-rule, the Provincial Ministry ought to be given in the Governor-General's discretion. The Governor General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention."\*

The Governor-General of India thought fit to exercise his power under this Section in connection with the question of the release of political prisoners in the United Provinces and Bihar. The Congress Governments in these provinces demanded the immediate release of all the political prisoners which the Provincial Governor refused to sanction under orders from the Governor-General under Sec. 126 (5). This resulted in the resignation of the Ministries.

The powers of the Governor-General and the federal Government in respect of the Provinces are further sought to be enlarged by the Government of India Act Amendment Bill which has been introduced in the House of Lords. Under Section 102, the Governor-General can proclaim a state of emergency, and when that is done the Central Legislature can legislate for the Provinces even in respect of Provincial subjects. There is, however, no provision in respect of the executive relations between the Central and the Provincial Governments. The proposed amendment seeks to provide for this in case of an emergency due to war. It is intended to enable the Central Government to extend its executive control over the Provincial Governments, if it is felt necessary. The powers can be usefully exercised by the Central Government at the time of war by taking-over the control of supplies or of lighting in vulnerable parts of India when air raids are feared.

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\* Para 221.

**Acquisition of Land for Federal Purposes.—**

Provision is made in the Act for the acquisition, by the Federation, of land situate in a Province, if it considers it necessary for any purpose connected with a matter regarding which the Federal Legislature has power to make laws. In such a case, the Federation may require the Province to acquire the land on its behalf and at its expense. If the land belongs to the Province, it may be transferred to the Federation on terms which may be agreed to, or if no agreement can take place, on terms which may be determined by an arbitrator appointed by the Chief Justice of India.\*

Procedure

**Broadcasting**—The important subject of broadcasting has received a special notice in the Act. The Federal Government is not to refuse unreasonably to entrust to a Provincial Government or to the Ruler of a Federated State such functions regarding broadcasting which may be necessary to enable them to construct and use transmitters in the Province or a State, and to regulate and impose fees in respect of construction and the use of transmitters and receiving apparatus in the Province or the State. This, however, does not mean that the Federal Government is required to entrust to any Provincial Government or a Ruler of a State any control over the use of transmitters, constructed or maintained by the Federal Government or by persons authorized by it, or over the use of receiving apparatus by persons so authorised. Further the Federal Government can subject the functions regarding broadcasting entrusted to a Government of a Province or the Ruler of a State to conditions, including conditions with respect to finance, which it may consider necessary; but it is not lawful for the Federal Government to impose any conditions regulating the matter broadcast by, or under the authority of the Provincial Government or the Ruler of a State. All Federal laws with respect to broadcasting have to take note of the foregoing provisions. But if there is any dispute whether the conditions imposed on any Provincial Government or the Ruler of a State are lawful, or any refusal by the Federal Government to entrust to them functions regarding broadcasting is unreasonable, it shall be determined by the Governor-General in his discretion.

Permission  
not to be un-  
reasonably  
refused to  
the Provinc-  
es in respect  
of certain  
functions

Disputes

\* Sec. 127.

These provisions do not restrict the power of the Governor-General for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or prohibiting the imposition on Provincial Governments and Rulers of Federated States such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions to be performed in his discretion or by the exercise of his individual judgment.\*

**Interference with Water Supplies.**—Special provision has been made in the Act regarding the important subject of interference with water supplies by one Province or State so as to prejudice the interest of another Province or State. If any Provincial Government or the Ruler of any Federated State considers that the interests of that Province or State or their inhabitants in the water from any natural source of supply in any Governor's or Chief Commissioner's Province, or a Federated State have been or are likely to be affected prejudicially by any executive action or law or the failure of any authority to exercise any of their power regarding the use, distribution, or control of water from that natural source, that Provincial Government or the Ruler may complain to the Governor-General.† When the Governor-General receives such a complaint, he shall appoint a Commission consisting of persons with necessary qualifications, knowledge, and experience to investigate in the matter of the complaint according to his instructions, unless he thinks that the issues involved in the complaint are not of sufficient importance to necessitate the appointment of such a Commission. Such a Commission, when appointed, shall report, after investigating, to the Governor-General, making the necessary recommendations. If the Governor-General thinks that he requires further explanation or guidance on any point not originally referred to the Commission, he may again refer the matter to the Commission for further investigation. If such a Commission requests the Federal Court for the purpose, the Court in the exercise of its jurisdiction shall issue orders and letters of request for the purposes of the proceedings of the Commission. The Governor-General after considering the report shall issue proper orders regarding the complaint, but

Complaints  
to be made  
to the Go-  
vernor-Gen-  
eral

Decision of  
complaints

Appointment  
of a Com-  
mission

Procedure

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\*Sec. 129. †Sec. 130.

before he has done that, the Provincial Government or the Ruler of the affected Federated State may request him to refer the matter to His Majesty in Council. When this is done, His Majesty in Council may give such decision and issue order on the matter which he considers proper. Such an order issued by His Majesty in Council or by the Governor-General shall have effect in any affected Province or a State, and any Act of a Provincial Legislature or of a State, repugnant to the order shall be void to the extent of repugnancy. The Governor-General may at any time vary his decision or order given regarding the complaint, if an application is made to him by the affected Provincial Government or the Ruler of the affected State. And if such an application relates to the decision or order of His Majesty in Council and in any other case when the Provincial Government and the Ruler of the State in question requests to the effect, the Governor-General is to refer the matter to His Majesty in Council who may vary the decision or order, if he considers proper to do so. It is also provided that an order made by His Majesty in Council or the Governor-General under the above provisions may contain directions regarding the payment of costs and expenses of the Commission by any Province or State. Such an order relating to expenses or costs may be enforced like an order made by the Federal Court. The above mentioned functions of the Governor-General are to be exercised by him in his discretion.\*

Reference  
to His  
Majesty in  
Council

Varying of  
orders

Payment of  
costs and  
expenses  
of the  
Commission

If the Governor-General thinks that the interests of any Chief Commissioner's Province, or of any of its inhabitants, in the water from any natural source of supply are affected as aforesaid, he may refer the matter to a Commission as in the case of a Governor's Province. The above-mentioned provisions and procedure apply in the case of this Commission as well.† The jurisdiction of the Federal Court does not extend to any action or suit in respect of any matter, if action in respect of that matter might have been taken under the above-mentioned provisions, by the Government of a Province, the Ruler of a State or the Governor-General.‡

Interference  
with water  
supplies of a  
Chief Com-  
missioner's  
Province

\* Sec. 131. † Para. 223. ‡ Sec. 133.

Provisions  
not applica-  
ble to a  
state, if so  
declared in  
the Instru-  
ment of  
Accession

These provisions regarding interference with water supply shall not apply in relation to any Federated State, if the Ruler of that State has declared so in his Instrument of Accession.\*

**Inter Provincial Co-operation.**—The J.P.C observed that though there were no proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, yet there was no reason to suppose that inter-provincial disputes would never arise. It observed :

J.P.C.'s ob-  
servations

" There will be necessarily many subjects on which inter-Provincial consultation will be necessary, as indeed has proved to be the case even at the present time ; and we consider that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems, common to adjacent areas as well as points of difference may be discussed and adjusted . . . It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work the joint interest of the Provincial Governments in them must be expressed in some regular and recognized machinery of inter-governmental consultation . . . . For this reason, we doubt whether it would be desirable to fix the Constitution of an Inter-Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that, although the Constitution Act should not itself prescribe the machinery for this purpose, it should empower His Majesty's Government to give sanction by Order in Council to such co-ordinating machinery as it may have been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis."†

Necessity of  
inter-Provin-  
cial Consul-  
tation

Need for a  
provision for  
an Inter-  
Provincial  
Council

Procedure  
for the esta-  
blishment of  
an Inter-  
Provincial  
Council

In accordance with these recommendations, the Act provides that if at any time His Majesty thinks, after consideration of representations made to him by the Governor-General, that the public interests would be served by the establishment of an Inter-Provincial Council to discharge the duties of inquiring into and advising upon disputes that may have arisen between the Provinces, investigating and discussing subjects in which the Provinces or the Federation have a common interest, or making recommendations for better co-ordination of policy and action regarding that subject, His Majesty in Council may establish such a Council defining the nature of its duties, organization

\* Sec. 134. † Para. 223.

and procedure. An Order establishing such a Council may provide for representatives of the Indian States to take part in the work of the Council.\*

In the actual working of the Provincial Autonomy, inter-provincial consultation has been found essential and very useful. A number of Inter-Provincial Conferences have met to consider questions of mutual interest such as industries, agriculture, education and police. Nevertheless no steps have been taken so far to establish any permanent machinery of an Inter-Provincial Council. Perhaps the right occasion for it will arise when the Federation of India comes into being.

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\* Sec. 135.

## CHAPTER XII

### THE SYSTEM OF PUBLIC FINANCE IN FEDERAL INDIA

Transfer of Finance to Popular Control ; the Problem of Federal Finance ; the Problem of Federal Finance in India ; The solution ; the Existing System in British India ; the Federal and the Provincial Revenues ; Federal Sources of Revenue ; Provincial Sources of Revenue ; Taxes to be shared or distributed among the Units ; Federal Surcharges ; Corporation Tax ; Taxes in which the Provinces are interested ; Help to Deficit Provinces ; Taxes being levied before the Commencement of the Act ; Allocation of Income-tax between the Centre and the Units ; A General View of Provincial Finance ; the Punjab Finances ; Financial relations between the Crown and the Indian States ; Taxes to which the States are liable ; Remission of the States' Contributions ; Immunities enjoyed by the States ; States' Maritime Customs ; Land Customs Duties imposed by the Indian States ; Proposals in the Act ; Payments from or by the Indian States ; Remissions of States' Contributions ; Cash Contributions ; Privilege or Immunity ; General Remarks ; Miscellaneous Financial Provisions ; Adjustments of Monetary Relations with Burma ; Additional cost of Federation ; Provisions in respect of Borrowing ; Audit and Accounts ; the Auditor-General of India ; the Provincial Auditor-General ; the Auditor of Indian Home Accounts ; Audit of Accounts in respect of the Crown's functions regarding the Indian States ; Provisions in respect of Property ; Provisions in respect of Contracts ; Provisions in respect of Loans and Financial Obligations ; Provisions in respect of Suits and Proceedings ; Contracts in connection with the Crown's Functions in its relations with the Indian States.

Danger  
involved in  
the transfer  
of finance

Need for  
Caution

**Transfer of Finance to Popular Control.**—No "Swaraj" is complete without the control over finance. If the purse strings are not in the hands of those who are responsible for the good government of the country, there cannot be any proper discharge of the duties as nothing can be done without adequate supply of money. Herein lies the importance and necessity of the demand for the transfer of control over the federal and provincial finance to the representatives of the people. On the other hand no risk can be taken respecting finance. A mistake may have very serious repercussions and may dislocate the whole system of government. In the case of India, there was, at least from the British point of view, an element of danger involved in the transfer of finance to the inexperienced hands of the Indian Ministers responsible to a popular legislature swayed by sentiments of political and economic nationalism and conscious of the pressing elementary economic needs of the poverty-stricken millions of the country. An incautious act might upset the whole apple-cart of the new Constitution so



laboriously built. Moreover the need for preserving the financial credit of India in the markets of the world, and particularly in the city of London, was imperative. The Home Charges, the Public Debt of India, the pensions, etc., the unpopular huge military expenditure, and certain other interests had to be protected in order to inspire confidence in Britain and to secure the safe passage of the Act. All this was clear enough. Thus complete control over finance could not be conceded. If at all finance was to be a transferred subject, there must be adequate and effective safeguards.

In the words of the Secretary of State for India :

"The safeguards to be provided must ensure the maintenance of financial stability and credit and this, in its turn, depends upon provisions in a new budget to control the balance, that the sinking fund arrangements are adequate, that capital and revenue expenditure are allotted on sound lines, that excessive borrowing or borrowing for revenue purposes is not undertaken, and that a prudent monetary policy is consistently pursued."\*

The need  
for Safe-  
guards

On the other hand, the Indian demand may be stated in the words of Sir Parushottamdass Thakurdass as follows :

"We say the finances of India should be managed by a Minister responsible to the Indian Legislative Assembly and responsible in the most complete manner. Safeguards we are prepared to accept whenever they are proved to be in the interests of India, any safeguard regarding finance other than this cannot be conceived by us to be justified . . . . Any future reforms will be useless if finance is not completely transferred to us to be managed by us and by a Minister responsible to the representatives of the people in India."\*

Indian  
demand

As a matter of fact, it was realized by all that during the period of transition there must be safeguards, but they must be in the interests of India, and not of British imperialism. But the scheme of public finance in the new Constitution is full of safeguards, such as the Special Responsibility of the Governor-General for the financial credit of India, the appointment of the Financial Adviser by him, the charging of a huge amount of some essential expenditure on the revenues of the Federation and the Provinces and keeping it beyond the vote of the popular Legislatures, the powers of the Governor-General and the Governors in respect of Budgets, protection of the salaries and pensions of the civil servants, creation of the Reserve Bank of India, and the proposed establishment of an independent Federal Railway Authority. All these safeguards are not apparently in the interests of

Safeguards  
in the in-  
terests of  
India

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\* Statements before the Federal Structure Committee.

India. Consequently they are looked upon with suspicion and distrust, and cause discontent. Perhaps the whole thing has been overdone so as to cause serious inconvenience to the future Federal Ministry so much so that some people think that the position under the new scheme would be much worse than under the Montford Reforms. It is not proposed here to go into that aspect of the question or to examine the system of public finance in Federal India from the political point of view. The question will be examined, as far as possible, only in its constitutional aspect.

Complex  
System of  
Federal  
Finance in  
India

Reconciling  
the in-  
terests of the  
units with  
those of the  
Federal  
centre

Sir Walter  
Layton's  
view

Allocation of  
sources of  
revenue to  
the units  
and the  
Federal  
centre ac-  
cording to  
their needs

**The Problem of Federal Finance.**—There is no denying the fact that finance always presents a very difficult problem in all Federations. The problem is all the more difficult under the very complex Indian federal scheme. The solution that has been attempted with the idea of satisfying all the needs is by no means simple, and cannot satisfy everybody. The general problem in a Federation is to reconcile the interests of the units with those of the Federal centre. In its economic aspect, the problem may be stated to be to concede adequate and independent sources of supply to the units while keeping the financial position of the centre sound. Both the units and the centre must get enough money to discharge their economic and political functions properly.

"A well-balanced tax-system for a federation demands a combination of these different principles—adequacy and elasticity to secure autonomy, and efficiency and suitability to secure administrative economy."

According to Sir Walter Layton :

"The problem of financial relations between the central and provincial authorities in any country is ideally solved where the sources of revenue which, from the administrative point of view, fall naturally within the sphere of the provincial governments, harmonize as far as their yield and elasticity is concerned with the functions which are assigned to these governments, while those which are naturally central sources accord with the functions of the central government."\*

Thus the problem in its simplified form is the allocation of sources of revenue to the units and the Federal centre according to their needs, and the ideal solution suggested is that these sources of revenue should fall from the administrative point of view within the respective spheres of the units and the centre.

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\* Statutory Commission Report, Vol. II, p. 210.

But many difficulties arise, when it comes to the practical application of this solution. In the first place the sources of revenue falling within the administrative spheres of the units and the centre may or may not be adequate for their needs. Again, certain taxes can be collected more conveniently by the centre though they fall within the administrative spheres of the units. Further, certain taxes, such as income-tax and corporation tax, must be under the control of the Federal centre in the interests of uniformity as well as general commercial and industrial progress of the country taken as a whole. Thus there cannot be strict adherence to one set and prescribed solution, which must be adapted and varied according to individual needs.

Another point that should be remembered about the federal finance is that there should be "an equitable distribution of burdens and benefits among the various federating units." In translating this general principle into practice, various difficulties present themselves as it is very difficult to ascertain burdens and benefits and then to have its distribution on equitable basis. Moreover this must be done in consonance with general national progress. It has been said that—

"In a well-organized federation, it is indeed the duty of the federal government to apply the common resources in such a manner that the welfare of the nation as a whole is maximised; this is to be done by making real transfers from the richer to the poorer units by taxation designed to fall more heavily on the former and by subsidies and subventions benefitting the latter."\*

Thus in the very nature of things, in a scheme of federal finance there is a need of concurrent jurisdiction in respect of certain taxes, and the use of balancing factors in the interests of equity and uniformity. The rigid distribution of sources of supply between the units and the centre which must take place in all federal schemes of government, is bound to result in certain inequalities. In order to correct them, resort is to be had to the distribution of the proceeds of certain taxes, levy of Federal and Provincial surcharges, payment of subsidies and subvention from Federal funds, and the contributions by the units.

The J. P. C. also realized this difficulty. It observed in its Report:

Difficulties in its practical application

No strict adherence to one set and prescribed solution

Equitable distribution of burdens and benefits among the units

Welfare of the nation as a whole

Concurrent jurisdiction and balancing factors

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\* Adakar: The Principles and Problems of Federal Finance, page 183.

J. P. C.'s  
views on the  
problem of  
Federal  
finance

"In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities, but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system."\*

Need for a  
realistic sol-  
ution

**The Problem of Federal Finance in India.**—The problem of federal finance in India is very complex and presents many difficulties. In view of these no ideal or theoretical solution can fit in. Instead a very realistic solution, though full of shortcomings, must be found out. One aspect of the problem, in the words of Mr. Pethick-Lawrence, is

"an unbridgeable chasm between two conflicting loyalties, the loyalty of India to her idea of self-government and the loyalty of the British administration to its conception of trust."

Bringing  
together the  
two points of  
view

While India demands complete control, the British Parliament does not want to give up its trusteeship, whatever that might mean. If there is not to be a deadlock, there must be mutual give and take. It must be realized that it is in the interest of India that she commands credit and inspires confidence in her financial position in foreign countries, while Britain must understand that confidence in the financial strength of India must be based not on any artificial foreign aid or control but on "the internal strength and integrity of Indian opinion." Approach from these points of view will bring the two apparently conflicting interests to meet at a common point. This common point should mean the recognition of the need of safeguards in the clear interests of India during the period of transition, and that these should be internal and not imposed from outside, being based on public opinion.

Safeguards  
in the in-  
terest of  
India

Allocation of  
separate  
sources of  
revenue be-  
tween the  
units and the  
centre

From the other point of view the problem presents itself in the form of the distribution or allocation of the sources of revenue between the Federal centre and the units with the idea of enabling them to discharge their functions properly and adequately. In other words, in India the Provinces must be provided with adequate funds but the Centre must not be weakened.

\* Para 244.

In the case of this country, the problem is further complicated by the accession of the States which for the purposes of the entry to the Federation are to be regarded as independent entities. They do not seem to be very anxious to give up their present theoretically sovereign status and to join the Federation at some financial cost to themselves. The scheme of Federation, therefore, must contain provisions in the shape, more or less, of allurements which should make it worthwhile for them to join the Federation.

Money must also be found to foot the bill in connection with the inauguration of the whole scheme of the Federation including that of Provincial Autonomy.

**The Solution.**—An attempt has been made in the new Government of India Act to satisfy all these needs. Ample safeguards have been provided with the declared object of safeguarding the financial credit and stability of the country as a whole as well as of the Provinces. Separate sources of revenue have been allocated between the Provinces and the Federation. Special and pressing economic needs of the Provinces are sought to be met by adopting certain balancing devices. Lastly, provision is made to compensate the States for joining the Federation. All this has made the whole scheme rather complex.

**The Existing System in British India.**—It is not proposed here to give the full story of decentralization of finance in British India. Suffice it to say that from 1870 the British Government began to move towards it so that the 1919 reforms practically adopted a federal system of finance. The authors of the Montford Report stated :

"We have to demolish the existing structure at least in part before we can build anew. Our business is one of devolution, or drawing a line of demarcation and cutting long-standing ties. The Government are to give and the Provinces must receive ; for only so can the growing organism of self-government draw air into its lungs and live." At another place, they remarked : "Our first aim has been to find some means of entirely separating the resources of the Central and Provincial Governments . . . The existing financial relations between the Central and Provincial Governments must be changed if the popular principle of government is to have fair play in the Provinces."

This was done by the devolution rules which resulted in almost completely rigid separation of the sources of revenue assigned respectively to the Centre and the Provinces. In the words of the J. P. C. :

The entry of the States complicates matters

Extra cost of the scheme

A complex scheme

The Evolution of the Federal system of finance

Devolution Rules

J. P. C's  
observations  
on the sys-  
tem under  
the 1919 Re-  
forms

" From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress."\*

The J. P. C. arrived at two conclusions—

J. P. C.'s  
Conclusions

" (a) that there are few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure; and (b) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the Provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously by the more industrialized Provinces like Bombay and Bengal."†

The Committee also discussed the effect of the entry of the States into the Federation and observed :

The Effect  
of the entry  
of the States

" The entry of the States into the Federation removes, indeed, one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike; but the States have no say under the present system in the fixing of the tariff. . . . With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. . . . "‡

Considera-  
tion of the  
problem

All these problems and needs have been kept in view while providing a system of public finance for Federal India. Various enquiries were held by expert committees for the purpose. Sir Walter Layton examined the whole question and submitted his report to the Indian Statutory Commission. The First Peel Committee, the Percy Committee, the Davidson Committee, and the Second Peel Committee also examined the problem. The Government gave their proposals in the White Paper. The Joint Parliamentary Committee examined them and made their recommendations which have been embodied in the Act. The Act outlines merely a bare scheme and the details have been filled in as a result of the recommendations of Sir Otto Niemeyer.

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\* Para 245 † Para. 246. ‡ Para. 247.



**The Federal and the Provincial Revenues.**—According to the Act, the revenues of the Federation include all revenues and public moneys raised or received by the Federation, notwithstanding certain taxes which are levied and collected by it, though the proceeds are to be paid over to the Provinces in the prescribed manner. And the revenues of a Province include all revenues and public moneys raised or received by a Province. \*

Definitions

**Federal Sources of Revenue.**—Sources of revenue have been demarcated and allocated separately to the Federation and the Provinces. The Federal sources of revenue include customs duties, including export duties, excise duties on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, Indian hemp and narcotics and narcotic drugs, non-narcotic drugs and medicinal and toilet preparations containing alcohol, the corporation tax, salt, state lotteries, taxes on income other than agricultural income, taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of the companies, duties on succession to property other than agricultural land, stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, proxies and receipts; terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights, receipts from fees in respect of matters in the Federal List, profits from coinage and currency, escheat and lapse in areas administered by the Federal Government, contribution by the States, tributes and other payment, and profits from commercial undertakings such as the Posts and Telegraphs, Federal Railways, and Banking, etc.

Separate  
Sources

These sources may be conveniently classified as under :—

Classification

(a) *Taxes levied, collected, and to be wholly retained by the Federation :—*

Customs, Corporation Tax; Taxes on capital values of assets of individuals and companies, miscellaneous receipts from fees in respect of matters in the Federal List; Surcharges on Income-Tax,

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\* Sec. 136.

Surcharges on items in list (c) below and Taxes in Lists (b) and (c) in areas administered by the Federal Government.

(b) *Taxes levied and collected by the Federation, whole or a part of which may go to the Provinces and the Federated States, if any, where they may be leviable :*

Income-Tax other than Corporation Tax ; Jute Export Duty—assigned by the Constitution Act.

Salt Duty ; Excise Duty on tobacco and on other goods manufactured or produced in India except alcoholic liquor for human consumption, opium, hemp, other narcotic, and narcotic drugs, non-narcotic drugs, and medicinal and toilet preparations ; Duties of Export—may be assigned to the Provinces by a Federal Act.

(c) *Taxes levied and collected by the Federation but belonging wholly to the Provinces and the Federated States, if any, where they may be leviable :*

Duties on succession to property other than agricultural land ; Stamp duties on bills of exchange, cheques, promotes, bills of lading, letters of credit, insurance policies, proxies and receipts ; Terminal Taxes on goods or passengers carried by railway or air ; Taxes on railway fares and freights.

(d) *Profits from commercial undertakings :—*

Posts and Telegraph ; Federal Railways, Banking, etc.

(e) *Income from the exercise of sovereign functions :—*

Coinage and currency ; Escheat and lapse in areas administered by the Federal Government.

(f) *Contribution from States :*

Tributes and other payments assigned by His Majesty.

**Provincial Sources of Revenue.**—The Provincial sources of revenue may be classified as under :—

(a) *Taxes that can be directly raised by a Province :—*

Land revenue ; Excise duties on alcoholic liquors for human consumption, on opium, Indian hemp and other narcotics, and narcotic drugs and non-narcotic drugs ; medicinal and toilet preparations containing alcohol or other things mentioned in the preceding sentence ; Taxes on agricultural income ; Taxes on



lands and buildings, hearths and windows ; Duties in respect of succession to agricultural land ; Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development ; Capitation taxes ; Taxes on professions, trades, callings and employments ; Taxes on animals and boats ; Taxes on sale of goods and on advertisements ; cesses on the entry of goods into a local area for consumption, use or sale therein ; Taxes on luxuries including taxes on entertainments, amusements, betting and gambling, the rates of stamp duty in respect of certain documents ; Dues on passengers and goods carried on inland waterways ; Tolls ; Fees in respect of any of the matters on the Provincial List, but not including fees taken in any court.

(b) *Taxes levied and collected by the Federation, but wholly allocated to the Provinces :—*

See List (c) under the head of Federal Revenues.

(c) *Taxes levied and collected by the Federation, a part of the proceeds of which may go to the Provinces :—*

See List (b) under the head of Federal Revenues.

(d) *Income from the exercise of sovereign functions :—*

Escheat and Lapse.

#### **Taxes to be shared or distributed among the Units.—**

It shall be noticed that besides allocating separate sources of revenue for the Federal Centre and the Provinces, provision is made for certain other kinds of taxes which are to be collected by the Federation but whose proceeds are to be distributed wholly or in part to the Provinces. This is in accordance with the principles stated above. It is laid down in the Act that duties in respect of succession to property, other than agricultural land, stamp duties mentioned in the Federal Legislative List, terminal taxes on goods and passengers carried by railway or air, taxes on railway fares and freights, shall be levied and collected by the Federation. But, except the proceeds that are attributable to the Chief Commissioners' Provinces, the remaining proceeds from these taxes in any financial year are to be assigned and distributed among the Provinces and those States where these duties or taxes are leviable, in accordance with the principles which may be formulated by a Federal Act.\*

Succession  
Duties ;  
Terminal  
Taxes ;  
Taxes on  
railway fares  
and freights

\* Sec. 137.

Income-tax

Distribution  
among the  
ProvincesDuties on  
Salt, Excise  
duties and  
Export  
duties

Besides the Provinces are to receive a part of the Income-tax. It is provided in the Act\* that taxes on income other than agricultural income, are to be levied and collected by the Federation. A prescribed percentage of the net proceeds of the tax, except that part of the proceeds which are attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, is to be assigned and distributed in the prescribed manner among the Provinces and those Federated States where the tax is leviable. The percentage that is prescribed originally cannot be increased by any subsequent Order in Council. The Federation, however, may retain out of the money assigned to the Provinces and States a prescribed sum in each year of a prescribed period, and in each year of a further prescribed period,† a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction. The prescribed periods in this case cannot be reduced subsequently. And the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year and that the second prescribed period shall be correspondingly extended. This direction, however, should not be given by the Governor-General without consulting such representatives of Federal, Provincial, and State interests as he may think desirable. Moreover before doing so, he must be satisfied that such an action is necessary for the maintenance of the financial stability of the Federal Government.

Duties on salt, Federal excise duties, and export‡ duties are to be levied and collected by the Federation. If it is so provided by a Federal Act, a part or whole of the proceeds from any of these duties may be distributed in accordance with the principles formulated by the Constitution Act among the Provinces and the Federated States to which the Act imposing the duty applies. This has been done to lend an element of elasticity to the finances of the Provinces. It is, however, expressly laid down that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any

\* Sec. 138. † Sec. 138 (2). ‡ Sec. 140.

export duty on jute or jute products must be assigned and distributed among the Provinces or the Federated States in which jute is grown in proportion to the respective amounts of jute grown therein. This has been done in particular to give a much needed relief to the jute-producing Province of Bengal which suffered severely under the older plan of allocation. The question was examined by Sir Otto Neimeyer who recommended that the share of the jute-producing Provinces in the Jute-Duty should be increased to 62½ per cent of the gross yield of the Duty. "This increase of 12½ per cent would mean in round figures the following additions to the resources of the provinces concerned at a corresponding cost to the Central Government: Bengal, 42 lakhs; Bihar, 2½ lakhs; Assam, 2¼ lakhs; and Orissa rather over "a quarter lakh."

The Export  
duty on Jute

Distribution  
among the  
Provinces

**Federal Surcharges.**—The Federal Legislature is empowered to levy a surcharge on the usual rate of Income-tax for the purposes of the Federation. The units cannot share this, the whole proceeds forming part of the Federal revenues. But the Act levying such a surcharge is to provide for the payment by each Federated State where Federal Income-tax cannot be levied, of an equivalent contribution of the estimated net proceeds from the surcharge if it were leviable in that State. That sum must be paid by the State concerned.\* The Federal Legislature may also levy a surcharge for Federal purposes only in respect of succession duties, stamp duties, terminal taxes and taxes on fares and freights. It is, however, intended that these surcharges shall be levied only in emergency cases. It is, therefore, laid down that a Bill or amendment imposing any such Federal surcharge cannot be introduced in the Federal Legislature without the previous sanction of the Governor-General in his discretion. The latter is not to give this sanction unless he is satisfied that all practical economies and all practical measures for otherwise increasing the proceeds of the Federal taxation or their portion which can be retained by the Federation, cannot balance the Federal receipts and expenditure on revenue account in that year.

On Income-  
tax

Leviable in  
Indian States

Other  
Federa  
Surcharges

only for  
emergency  
purposes

Previous  
sanction of  
the Governor  
General

**Corporation Tax.**—It is expressly provided in the Act that Corporation tax cannot be levied by the Federation in any Federated State until after ten years after the establishment of the Federation. When such a tax is levied, choice must be given to the

Levy in a  
Federated  
State

\* Sec. 138.

Appeal to the  
Federal  
Court

Ruler of any Federated State, where the tax is leviable, to make payment of an equivalent contribution to the estimated net proceeds from the tax if it were levied in the State. In such a case, no information or returns can be called from any corporation in the State by the Federal officers, but the Ruler of the State is duty bound to cause to be supplied to the Auditor-General of India such information as he may reasonably require to determine the amount of the contribution. If the Ruler is not satisfied with the amount so determined, he may appeal to the Federal Court. The latter may reduce the amount, if it is satisfied that the amount determined is excessive. The decision of the Court on the point is final.\*

J. P. C's  
Recommendation

The Corporation tax is a supertax on the profits of companies. In connection with it, the J.P.C. observed :

"It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution."†

Parliamentary  
Debates

It was also pointed out in the Parliamentary Debates that :

"The States always made it plain that they would preserve to themselves the right not to withhold contributions but to decide whether contributions should be derived from direct taxation as in the case of Mysore, or whether equivalent payment should be made out of the revenues of the State to that which would be leviable if it were raised by the Corporation Tax."

Blurring of  
responsibility

**Taxes in which the Provinces are interested.**—It will be noticed that the Federal taxes are not merely the concern of the Federation as the Provinces share the proceeds of certain Federal taxes such as Income-tax, Jute Export Duty, Salt Duty, Excise Duty on tobacco. Duties on Exports, Succession Duties, Stamp duties on bills of exchange, Terminal taxes on goods or passengers carried by railway or air, Taxes on railway fares and freights etc. The J.P.C. observed :

"This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection ; but we see no escape from it."‡

It was, therefore, suggested that changes in such taxes should take place after the consultation of the units. This suggestion has not been adopted in the Act, but it is provided that no Bill or amendment,

\* Sec. 39. † J. P. C. Para. 256. ‡ J. P. C. Para. 262. § Sec. 141.

which imposes or varies any tax or duty in which the Provinces are interested, or which varies the meaning of the expression "agricultural income," or which affects the principles on which moneys are or may be distributed to the Provinces or the States, or which imposes any Federal surcharges, can be introduced or moved in the Federal Legislature except with the previous sanction of the Governor-General in his discretion. This sanction is not to be given unless the Governor-General is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or their Federal share would not balance Federal receipts and expenditure on revenue account in that year.

Previous sanction of the Governor-General

**Help to the Provinces.**—Under the scheme of the Act, certain Provinces are unable to meet their normal expenditure. It was necessary to render them financial help from outside if they were to start on an even keel. Sir Otto Niemeyer proposed to render assistance to the Provinces in three ways, in the form of cash subventions, cancellation of the net debt incurred prior to 1st April, 1936, and distribution of a further 12½ per cent of the Jute Duty. Certain deficit Provinces had to be given subventions from Federal revenues. The Percy Committee brought the case of such deficit Provinces to the notice of His Majesty's Government. The Second Peel Committee more or less accepted these recommendations, and specially pointed out the case of Sind, Orissa, and Assam. The J. P. C. accepted the White Paper proposals on the point, and observed :

Sir Otto's proposals

J. P. C.'s observation

Sind

Orissa and Assam

North-West Frontier Province

"The problem of Sind differs from that of the others, since it is not expected that this Province, will permanently remain a deficit area. Other Provinces notably Orissa and Assam are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources, present or proposed; and in these cases it is intended that there shall be a fixed subvention from the Federal revenues. Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended Federal assistance; and we agree. . . The case of the North-West Frontier Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though not strictly to be classed as defence expenditure. In this case it seems essential that there should be power to review the amount from time to time though here also too frequent changes would be open to the objection to which we have referred above."\*

\* Para. 259.

Provision in  
the Act

The actual provision in the Act is to the effect that such Provinces as His Majesty may determine to be in need of assistance may receive certain prescribed sums as grants in aid in each year. Different sums may be prescribed for different Provinces. These sums shall be charged on the revenues of the Federation. No grant fixed under this provision can be increased by a subsequent Order in Council unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made. This, however, does not apply to the North-West Frontier Province.\*

The Amount  
of grants in  
aid

The Federal contribution (in rupees) to the Provinces as fixed by the Order in Council† under this section is as under :—

North-West Frontier Province...	100 lakhs a year.
Orissa	...47 lakhs per year up to 1942. 43 lakhs per year in the years 1942-46. 40 lakhs per year subsequently.
Assam	...30 lakhs per year.
United Provinces	...25 lakhs a year up to 1942 only.
Sind	...gets aid for 50 years. 110 lakhs in the year 1937-38. 105 lakhs a year in the years 1938-39 to 1947-48. 80 lakhs a year in the years 1948-49 to 1968-69. 65 lakhs a year in the years 1969-70 to 1974-75. 60 lakhs per year in the years 1975-76 to 1980-81. 55 lakhs per year in the years 1981-82 to 1986-87.

\* Sec. 142. † The Government of India (Distribution of Revenues) Order, 1936.

Sir Otto proposed cancellation of the entire debt of Bengal, Bihar, Assam the North-West Frontier Province, and Orissa, and all pre- 1936 deficit debt plus approximately two crores of pre- 1921 debt of the United Provinces. The total annual relief to the Provinces, which he aimed at giving was as under :

Cancellation  
of Debts

Bengal 75 lakhs ; Bihar 25 lakhs ; Central Provinces and Berar 15 lakhs ; Assam 45 lakhs ; North-West Frontier Province 110 lakhs, Orissa 50 lakhs, Sind 105 lakhs ; United Provinces 25 lakhs.

Relief to the  
Provinces

The extra recurrent cost to the Federal Centre was estimated to be 192 lakhs. Further a non-recurrent grant of 19 lakhs and 5 lakhs were recommended for Orissa and Sind respectively.

### **Taxes being levied before the commencement of the**

**Act.**—It is expressly provided that any taxes, duties, cesses, fees which were being lawfully levied before April 1, 1937, under a law in force on January 1, 1935, by any Provincial Government, municipality or other local authority for their purposes may continue to be levied and applied to the same purpose until otherwise provided for by the Federal Legislature even though these taxes, etc., might have been mentioned in the Federal Legislative List.\*

Taxes being  
levied by  
local bodies

**Allocation of Income-tax between the Centre and the Units.**—The allocation of Income-tax between the Centre and the units presented a difficult problem. The proposed entry of the States in the Federal scheme of government added to the complexity of the problem. In the words of the J.P.C.

"If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income-tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind."†

Complexity  
of the  
Problem

On the other hand, the Provinces put forward a demand for more funds and particularly the refund of the proceeds from Income-tax levied in their territory. This demand had to be seriously considered in order to put the Provinces on an even keel ; but at the same time the position of the Centre could not be unduly weakened.

"In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new Federal resources were developed."‡

Various  
Proposals

\* Sec. 143 (2). † Para. 247. ‡ J.P.C. Para. 248.



The Federal Finance Committee, however, saw no prospect for the abolition of such Provincial contributions within any period that could be foreseen. On the other hand, the Centre could not be expected to do without the Income-tax proceeds, particularly in view of the additional cost involved in the enforcement of the Act.

The White Paper proposed that—

The White  
Paper's  
Proposal

"Taxes on income derived from federal sources, *i.e.*, federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent, nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so."\*

In addition to this the Federal Government and the Legislature could levy a surcharge for Federal purposes.

J.P.C.'s  
Recom-  
mendations

The J. P. C. was critical of this proposal and expressed the opinion that there was little or no prospect of the possibility of fixing a higher percentage than 50 per cent and that there was an obvious difficulty in prescribing in advance a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process. So they thought it preferable to leave the actual periods to be determined by Order in Council in the light of circumstances at the time rather than to fix them by Statute.†

Niemeyer's  
Enquiry

These suggestions were accepted and embodied in the Act. After the Act was passed, Sir Otto Niemeyer was appointed to conduct an enquiry in the problem of Federal finance, and also to suggest specifically the percentage on the basis of which the proceeds from Income-tax should be allocated between the Centre and the Provinces, to determine the basis of distribution of Income-tax among different Provinces, and to fix the duration of each of the two periods into which the initial and permanent assignment of the Income-tax to the Provinces could be divided. Sir Otto recommended :—

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\* J.P.C. Para. 250 ; White Paper, Proposals 139, 141. † Para. 252.



"By six equal steps, beginning from the sixth year from the introduction of provincial autonomy, but subject to the proviso to Sec. 138 (2) of the Act, the Centre is to distribute income-tax to the provinces so that finally 50 per cent of the distributable total has been relinquished in the intermediate five years. There is no possible relinquishment of the income-tax so long as the portion of the distributable sum remaining with the Centre together with any contribution from railways aggregates to less than 10 crores."

Niemeyer's  
Recommendations

The percentage division of the distributable portion of the Income-tax between the Provinces is as follows: Madras, 15; Bombay, 20; Bengal, 20; U.P., 15; the Punjab, 8; Bihar, 10; C.P., 5; Assam, 2; N. W. F. P., 1; Orissa, 2; and Sind, 2.

Allocation  
among the  
Provinces

Sir Otto Niemeyer states that:

"Substantial justice will be done by fixing the scale of distribution partly on residence and partly on population, paying to neither factor a rigidly pedantic deference for which the actual data provides insufficient justification."

Basis of dis-  
tribution

These recommendations were accepted and were embodied in the Government of India (Distribution of Revenues) Order in Council 9361. The first of the periods\* to be prescribed by His Majesty in respect of the retention of Income-tax proceeds by the Federation is fixed by this Order to be five years. The latter also lays down that the sum to be retained by the Federation under the above-mentioned provision can in each of these prescribed years be either the whole of the moneys assigned to the Provinces or the States, or such a part of that which will along with the Federal share of Income-tax for the year and contribution by the Railways to the funds of the Central Government amount to thirteen crores of rupees, whichever is less† In other words the Centre is to distribute the Income-tax proceeds to the Provinces in such a way that finally 50 per cent of the total distributable proceeds are made available for distribution in the prescribed period of five years provided that the portion of the distributable proceeds remaining with the Centre along with any contribution from the Railways aggregates Rs. 13 crores.

The Order  
in Council

**A General View of Provincial Finance.**—To sum up, it may be stated that separate sources of revenue have been allotted to the Provinces. But, although the list of Provincial sources looks imposing, yet it does not bring sufficient revenues to the Provinces to meet their pressing needs. Generally speaking, all the progressive or elastic and productive sources of revenue are assigned to the Federal Government, and

Separate  
Sources of  
Revenue

\* Required by Sec. 138 (2). † The Government of India Distribution of Revenues) Order, 1936, 6 (1, a and b).

Help from  
Federal  
Revenues

Division of  
the Export  
Duty on Jute

Subventions

Relief to  
certain  
Provinces

Distribution  
of certain  
Taxes

The Present  
Position

Balanced  
Budgets

comparatively inelastic and burdensome sources are assigned to the Provinces. Further some of the Provincial items are to be utilized by the local bodies like the Municipalities and the District Boards. This is at a time when the Provinces are expected to give some relief to the poor and overtaxed peasantry, and to spend large sums of money on nation-building activities. The Provinces, under the circumstances, cannot go on an even keel left to themselves. They have, therefore, to secure some relief from the Federation. One-half of the net proceeds from Income-tax, other than Corporation tax and tax on Federal incomes, is to be distributed among the Provinces in a prescribed manner in accordance with the principles laid down by Sir Otto Niemeyer. Sixty-two and a half per cent of the proceeds from the export duty on jute is divided among the jute producing Provinces of Bengal, Orissa, and Assam. The deficit Provinces of Sind, Orissa, North-West Frontier Province, United Provinces, and Assam receive subventions. Under the scheme, Bombay has received an annual relief to the extent of approximately 90 lakhs from the separation of Sind, while Madras and Bihar have received annual relief to the extent of approximately 20 lakhs and 8 lakhs respectively from the separation of Orissa. Moreover it is further provided that if the Federal Legislature so provides by an Act, proceeds from Salt Excise, and Export Duties may be distributed among the Provinces. This is, however, a remote possibility in view of the not very affluent finances of the Federal Government.

*Succession duties etc.*  
By these means funds have been found for the Provinces. The popular Provincial Governments are confronted with huge problems and are expected to undertake on a huge scale the nation-building work including rural uplift, educational progress, etc., to fight growing unemployment, and to raise generally the financial condition of the masses. All this requires great outlay of expenditure. But the Provinces cannot afford that so much so that at one time it was feared that the frail bark of Provincial Autonomy might founder on the rock of finance. Fortunately the brief working of the Autonomy in the Provinces has falsified the fears, and most of the Provincial Governments have been able, generally speaking, to balance the budget or at least to pull on without extensive borrowing. Yet it is clear that they are finding it very difficult

to satisfy the manifold demands on their resources with the result that all the important social services and nation-building departments are not being attended to the extent they should, what to say of giving much needed relief to the poverty stricken peasantry. The position was very correctly described by Hon'ble Mr. Manohar Lal, the Finance Minister of the Punjab, in his Budget speech before the Punjab Legislative Assembly last year. He stated : " Sir, Provincial Governments in India do not enjoy much elbow room because of the narrow range of finance rigidly confined within the strictest bounds. All provincial activity has to be carried on checked at every stage by this constraining factor. Even moderate projects to push forward along essential lines of progress have to be discountenanced. Increased liability for securing expenditure can be assumed only with a degree of caution that must damp the spirit of any reformer : no bold and large scale improvements, however urgent, and matters of necessity, can be entertained. Finance the helpmate of administration, operates as a discouraging mistress, for the dictates of finance cannot be ignored with impunity. The main sources of our revenue, the chief claims for expenditure are largely fixed and invariable "

Hon'ble Mr.  
Manohar  
Lal's  
remarks

Under the circumstances, the Provincial Governments are practically hunting for new sources of revenue. Some of them have tried to save a little by retrenchment, but here there is not much scope because the Services with their high emoluments, and particularly the all India Services, are strongly protected under the Act and cannot be easily touched. In this respect the Congress Ministers have set a very noble example by agreeing to work on paltry salaries of five hundred rupees a month each, with certain small allowances. The Congress Governments generally speaking, are also paying smaller, salaries and allowances to the members of the Legislatures. These economies, however, cannot solve the huge problem though they make a small saving. Greater attention is, therefore, being paid to find out new sources of revenue. The Government of Central Provinces and Berar proposed to levy a tax on the sale of petrol and lubricants in the Province. The Central Government considered it as an encroachment on its field of revenue because the proposed tax was a sort of excise which was a Federal subject. The case was taken to the Federal Court which gave its decision in favour of the Provincial Government. The decision has been welcomed by the Provincial Governments because it has given them a new source of revenue. They have not been slow in using the hint as many of them, including the Government of the Punjab, have

Hunt for the  
new Sources  
of Revenue

Petrol tax

Fines in  
Cantonment  
Areas

decided to follow in the footsteps of the Central Provinces and Berar in the matter of taxing the sale of motor spirits and lubricants. The Government of the United Provinces in its hunt for new sources of income claimed that the fines imposed and collected in the cantonment areas should be credited to the Provincial revenues with retrospective effect since 1924 as certain provisions of the Cantonment Act, 1924, were *ultra vires* of the then Indian Legislature. The Federal Court which heard this case, dismissed the case of the United Provinces' Government, but the Chief Justice of India remarked :

" The practical effect of the transitory provisions order was to postpone for two years the coming into effect of so much of the Adaptation Order as relates to Section 106 of the Act of 1929, that is, until April 1 of the current year. On and after that date, unless the Adaptation Order is amended, the fines will no longer be credited to the cantonment funds, but will be credited to the revenues of the province."

Thus as matters stand the Provincial Governments may claim these fees and fines after April 1, 1939.

Employ-  
ment Tax

The Government of the United Provinces also proposes to levy, what has been called, an Employment Tax in a graded scale on persons who receive salaries. Legal opinion is divided on the point, and some consider this tax to be illegal as it is another form of Income-tax which is a Central subject, and in actual effect it means a cut in the salaries of public servants and others. Lastly, taxes on dog racing, on crosswords, and on the sale of commodities have been proposed in certain other Provinces like Bombay, Bengal, and Madras. Thus Provincial Autonomy has meant increased taxation which is absolutely essential for financing beneficent schemes.

Sales Tax

Happy  
Budgetry  
position

**The Punjab Finances.**—A few words may be said here about the financial position of our Province, *viz.*, the Punjab. As far as the finances are concerned, the Punjab is a happy Province enjoying a very sound budgetry position in spite of the increased expenditure on Beneficent Departments. The Hon'ble Mr. Manohar Lal, an economist of repute, is the custodian of our finances. In his Budget speech last year (1938-39), he stated before the Punjab Assembly :

" It has been repeatedly asserted by the highest authorities that finance " has a way of taking terrible revenge upon nations

and individuals who neglect or despise it." I have taken care, in obedience to this salutary warning, that all possible attention and respect is shown to the minutest requirements of exigent finance that there be no occasion for our being visited with any of finance's dire revenges or punishments."

That this was no idle boast is proved by the present state of finance of the Province. Partly due to the wise handling by the Finance Minister and partly due to the strong position under which the Provincial Autonomy commenced in this Province, the Government could boast of a huge surplus last year.

A huge  
Surplus

It was partly on account of this strong financial position that the Punjab was not very generously treated by Sir Otto Niemeyer. The latter recommended the share of the Punjab from the proceeds of the Central Income-tax to be only 8<sup>0</sup>/<sub>10</sub>, as compared with 15<sup>0</sup>/<sub>10</sub> to Madras, 20<sup>0</sup>/<sub>10</sub> to Bombay, 20% to Bengal, and 15<sup>0</sup>/<sub>10</sub> to the United Provinces. The Government of the Punjab protested against this and pointed out in their note that it felt that the Province would have a permanent sense of injustice and that at least their Income-tax share should be fixed on the population percentage. The Secretary of State, however, accepted the Niemeyer Report. He observed in respect of the Punjab:

Share of the  
punjab in  
the Income-  
tax proceeds

"While I sympathize with much that the Punjab Government says, I cannot refrain from observing that the case of that province relatively to others, particularly Madras and Bombay, appears to have been somewhat exaggerated . . . . . Again, such benefits as Madras and Bombay may derive from decentralization and consolidation scheme is, as the Government of India point out, temporary, while on the other hand it may be noted that as part of the debt scheme the Punjab is left with a large block of debt on exceptionally favourable terms.

The  
Secretary of  
State's  
Remarks

I sympathize with the natural disappointment of the Punjab Government that that province alone of the provinces of India should receive no assistance, except to a trifling degree through debt scheme . . . . ."

Thus the Punjab was expected to stand fully on her own legs without looking for any outside help.

The Provincial Autonomy was introduced on April 1, 1937. The present Government with a Unionist cum Hindu National Progressivist, and Sikh Nationalist majority assumed office on that very day. But the finances of the Province

1935-36  
Budget

were a legacy from the previous years. The Budget for 1935-36 originally provided for a trifling surplus of Rs. 56,000, but the actual working of the year showed an actual deficit of a little over two lakhs. In 1936-37 the Revenue receipts were estimated at Rs. 10,44,20,000 and Revenue expenditure at Rs. 10,60,58,000, thus showing a deficit of a little over Rs. 16½ lakhs. The corresponding revised figures for the year (1936-37) given at the time of the presentation of the Budget in June, 1937, were Revenue receipts Rs. 10,86,53,000 and Revenue expenditure Rs. 10,63,66,000, thus yielding a surplus of about Rs. 23 lakhs in the place of the budgeted deficit of Rs. 16½ lakhs. The actual working of the year, however, showed a realized actual surplus of nearly Rs. 31 lakhs, viz., Rs. 30,88,000, after utilizing Rs. 15 lakhs towards reducing the capital account of the Hydro-Electric scheme. This surplus of about Rs. 31 lakhs was merged in the general Provincial balances.

1936-37  
Budget

Surplus

The first Budget after Provincial Autonomy was introduced in June, 1937, to have effect from 31st July, 1937, four months later than the usual time. The Budget estimated the Revenue receipts for the year to be Rs. 10,90,39,000 and the Revenue expenditure to be Rs. 10,88,67,000, thus showing a small surplus of Rs. 1,72,000. It was pointed out that this small surplus was also liable to disappear as no provision has been made for certain expenditure that could be foreseen. The Hon'ble Finance Minister stated :

1937-38  
Budget

" If such a deficit should appear, due, as I have said, to factors now forecastable, we need have no fears, particularly as this year's revenue has suffered so heavily because of unusual calamities in hailstorm, cyclone and untimely rains. The deficit would indicate no normal or permanent feature of our finances."

Huge surplus

At the time of the presentation of the Budget last year (1938-39), it was pointed out that the real surplus on the year's (1937-38) revised figures was Rs. 50,20,000 in spite of the provision for large revenue remissions and other relief to the agriculturists, an increased outlay on the beneficent departments, and additional expenditure consequent on the introduction of the new reforms. This surplus was in addition to the sum of Rs. 11.04 lakhs to be received from the Government of India under the Niemeyer arrangements. Thus the total surplus was Rs. 61 lakhs. Rs. 55 lakhs from this were utilized for the

creation of a special Rural Development Fund, leaving a surplus of Rs. 6 lakhs. When the final accounts for the year were prepared, this small surplus of Rs. 6 lakhs rose to Rs. 32 lakhs. Apart from this increase in the surplus by Rs. 26 lakhs, there was an increase of Rs. 42 lakhs on the income side of the Budget under the heads of debt deposits and remittance

The Budget for the last year, viz., 1938—39, estimated the Revenue receipts to be Rs. 11,41,56,000 and Revenue expenditure to be Rs. 11,36,42,000, thus providing for a small surplus of Rs. 5.14 lakhs. This included Rs. 6 lakhs which was expected to be the surplus from the last year but did not include the sum that was to be received from the Centre under the Niemeyer arrangements.

A brief summary of the Budget (1938—39) is given below :—

1938-39  
Budget

### Revenue Receipts

Land Revenue	...	...	...	Rs.	2,93,55,000
Provincial Excise	...	...	...	"	1,04,11,000
Stamps	...	...	...	"	90,74,000
Forests	...	...	...	"	24,20,000
Registration	...	...	...	"	9,54,000
Receipts under Motor Vehicles Taxation Acts	...	...	...	"	7,60,000
Other Taxes and Duties	...	...	...	"	2,67,000
Irrigation	...	...	...	"	4,51,43,000
Interest	...	...	...	"	3,97,000
Administration of Justice	...	...	...	"	7,80,000
Jails and Convict Settlements	...	...	...	"	3,88,000
Police	...	...	...	"	2,45,000
Miscellaneous Departments	...	...	...	"	2,63,000
Education	...	...	...	"	19,69,000
Medical	...	...	...	"	11,75,000
Public Health	...	...	...	"	3,01,000
Agriculture	...	...	...	"	18,40,000
Veterinary	...	...	...	"	2,57,000
Co-operation	...	...	...	"	2,37,000
Industries	...	...	...	"	5,75,000
Civil Works and Miscellaneous Public Improvements	...	...	...	Rs.	49,66,000
Miscellaneous	...	...	...	"	20,69,000
Miscellaneous Adjustments between Central and Provincial Governments	...	...	...	"	3,10,000
Extra-ordinary Receipts	...	...	...	"	30,59,000
Total Revenue				"	11,72,15,000

### Expenditure Charged to the Revenues

Land Revenue	...	...	...	Rs.	43,31,000
Provincial Excise	...	...	...	"	11,54,000
Stamps	..	..	...	"	1,63,000



Forests	...	...	...	...	Rs.	23,20,000
Registration	...	...	...	...	"	73,000
Charges on account of Motor Vehicles						
Taxation Acts	...	...	...	...	"	64,000
Other Taxes and Duties	...	...	...	...	"	91,000
Irrigation	...	...	...	...	"	1,48,60,000
Debt Services	...	...	...	...	"	23,69,900
General Administration	...	...	...	...	"	1,15,21,000
Administration of Justice...	...	...	...	...	"	54,60,000
Jails and Convict Settlements	...	...	...	...	"	30,80,000
Police	...	...	...	...	"	1,25,41,000
Miscellaneous Departments	...	...	...	...	"	1,89,000
Scientific Departments	...	...	...	...	"	37,000
Education (European and Anglo-Indian)	...	...	...	...	"	6,34,000
Education (Excluding European and Anglo-Indian)	...	...	...	...	"	1,56,81,000
Medical	...	...	...	...	"	52,54,000
Public Health	...	...	...	...	"	18,16,000
Agriculture	...	...	...	...	"	40,33,000
Veterinary	...	...	...	...	"	17,57,000
Co-operation	...	...	...	...	"	16,62,000
Industries	...	...	...	...	"	20,14,000
Civil Works and Miscellaneous Public Improvements	...	...	...	...	"	1,59,24,000
Miscellaneous	...	...	...	...	"	27,83,000
Miscellaneous adjustments between the Central and Provincial Governments						
Extraordinary Items						
Capital Expenditure charged to Revenue					"	12,63,000
Total Expenditure charged to Revenue					"	11,49,05,000

Broad  
Features of  
the Budget

A very welcome feature of this Budget was an increased expenditure on the Beneficent Departments. In 1936-37 this expenditure was Rs. 2.87 crores. For 1937-38 there was an advance of Rs. 41 lakhs over it, the total amount of expenditure being Rs. 3.28 crores. There is, however, much further scope in respect of expenditure on these activities. Moreover, the Government, it was given out, was contemplating heavy calls on its expenditure in order to give a substantial relief to small landholders, introduction of prohibition in some selected districts and some other schemes of industrial development. For this reason fresh sources of revenue and drastic retrenchment in expenditure are required. The Government is keenly waiting for the Report of the Resources and Retrenchment Enquiry Committee to guide them in the dual task of finding new sources of revenue and effecting economies in certain



directions where they may be called for.\*

**Financial Relations between the Crown and the Indian States.**—It is expressly laid down that the provisions mentioned above in connection with the financial relations of the Federation and the Provinces do not affect any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.† Separate and special provisions are made in the Act for regulating the financial relations between the Crown and the States. Much will also depend on the terms on which a particular State accedes to the Federation. Special provision is made for the supply of funds to the Crown for the discharge of functions in connection with the States that do not join the Federation. It is laid down that the Federation shall pay to His Majesty in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required for the discharge of those functions, which include payment of any customary allowances to members of the family or servants of any former Ruler of any territories in India.‡

Special provisions for the purpose

Supply of funds in respect of functions in relation to the Non-Federating States

This provision makes the Federal Revenues responsible for meeting the expenditure of the Crown in connection with the Non-Federating States and the sphere of activities of the Federated States outside the Federal sphere. This is rather unjust to the Federation because it is agreed that the relations of the States are directly with the Crown and not with the Government of India. If it is so, it should be the Paramount Power which should foot the bill in this connection. There might have been some justification for the payments being made from the coffers of the Government of India, when the tributes

Unjust to the Federation

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\* The state of affairs, as it has actually developed, in the Punjab is not as happy as described above. The Finance Minister had estimated a small surplus of Rs. 5 lakhs for the year 1938-39. According to the revised estimate this surplus would be changed into a deficit of Rs. 27 lakhs. For this year (1939-40) the Budget provides for a deficit of Rs. 29 lakhs. This not very welcome change is mainly due to the Hissar famine which has adversely influenced the finances of the Province. It was pointed out by the Finance Minister that but for the famine there would have been a surplus of Rs. 26 lakhs.

† Sec. 143 (1). ‡ Sec. 145.

received from the Indian States were credited to that Government. But now that the policy of gradual abolition of these tributes has been recommended, there does not seem to be any justification for this expense being charged on the Federal revenues.

The States' unwillingness to contribute to direct taxation

**Taxes to which the States are liable.**—The entry of the States in the Federation has made the problem of Federal finance all the more difficult. In accordance with the recognized principle that there should be a uniform distribution of burdens and advantages among the units of the Federation, the States must contribute their due share to the Federal fisc. While recognizing this, they made it clear that they were not prepared to allow the levy of direct taxation by the Federation in their territory. Thus it added to the troubles of the framers of the Constitution, as they were called upon to devise a scheme which should be satisfactory to the States but at the same time bring enough money to the Federation.

The States are not liable to direct Federal Taxes

Under the scheme of the Act, the States joining the Federation are not liable to direct Federal taxation, such as Income-tax, Succession Duties, Stamp Duties, Terminal Taxes, etc., except if they themselves agree to their levy by the terms of their Instruments of Accession. Corporation Tax can be extended to a Federated State after the lapse of ten years after the establishment of the Federation. In the case of this tax as well as the Federal surcharge on Income-tax, the Rulers of the Federated States have to be given the option of making payment to the Federal Government of an equivalent sum in lieu of the net proceeds which it is estimated would result from these taxes if levied and collected directly. In the case of the Corporation Tax, the Federal officers cannot call for any information or returns from any corporation in the State, but it is the duty of the Ruler to cause to be supplied the required information to the Auditor-General of India for the purpose of determination of these sums. Other taxes that affect the States indirectly are the Customs Duties, Export Duties, Salt Duty, Currency Profits, Profits on trading companies earned in the States and brought to account in British India. The States' contribution to the Federal revenues also includes direct contributions in the form of tributes, if any.

Corporation Tax leviable after ten years

Option to pay equivalent sums

Supply of information

Taxes that affect the States indirectly

Payment of Tributes, etc.

The States' contribution to the revenues of the Federation may be classified as follows:—

(i) *Taxes to which the States are liable to contribute in normal times*: Customs Duties; Export Duties; Federal Excise Duty; Salt Duty; Corporation Tax (leviable after ten years after the establishment of the Federation).

Classification

(ii) *Taxes to which the States are liable to contribute at the time of financial stringency*: Surcharge on Income-tax.

(iii) *Other sources of Revenue to which the States will contribute either directly or indirectly*: Certain fees on Federal matters; Profits on the working of Federal Railways, Postal Department, Mint and Currency, the Reserve Bank, etc.; and direct contributions, if any.

(iv) *The States are not liable to contribute to Income-tax and Property Taxes levied in normal times and to Federal surcharges on Terminal Taxes, Stamp Duties, and Succession Duties even at the time of financial stringency.*

It should, however, be pointed out that the Federated States, like the Provinces, are probably subject to the general power of the Governor-General to empower by a public notification the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in the Federal, Provincial or Concurrent Lists, including a law imposing a tax not mentioned in these Lists.\* The States, however, may save themselves from the operation of this provision by putting a condition in their Instruments of Instruction.

General power of the Governor-General in respect of taxation

### Notes Remission of the States' Contributions.

"The entry of the States into Federation, . . . . involves some complicated financial adjustments mainly in respect of tributes and ceded territories; but these, though of importance to individual States, do not fundamentally affect the Federal finance scheme as a whole."†

Financial Adjustments

These adjustments are provided for by the Act. The whole question was examined by the Indian States Enquiry Committee (Financial), commonly known as the Davidson Committee. The recommendations of the Committee were generally accepted by the Joint Parliamentary Committee and were embodied in the new Act.

Davidson Committee

The Davidson Committee's Enquiry

\* Sec. 104 † J.P.C. Para. 263.

Payment of  
Cash  
Contribution  
or Tributes  
by the  
States

In the first place, some States pay at present "cash contributions" or "tributes" to the Crown. These payments form part of the revenues of India.

"The amounts vary from Rs. 24½ lakhs in the case of Mysore to Rs. 3 in the case of a small State named Ranasan in the Mahikantha agency of the Bombay Presidency. The tributes have arisen from the terms on which territory was exchanged or restored, or from the settlements of claims between the Governments, but in many cases it is in lieu of former obligations to maintain or supply troops."\*

Total  
amount of  
these  
Contribu-  
tions

Not feudal  
in nature

Anomalous  
in a Federa-  
tion of equal  
partners

Abolition of  
the Tributes  
recom-  
mended

Ceded  
Territories

The total amount of these "tributes" is a little over Rs. 77 lakhs per year including inter-State contributions that have been assigned to the British Government or that have lapsed. The Davidson Committee went into the origin of these tributes and opined that they were not feudal in nature, and were imposed in lieu of military guarantees. They become anomalous in a Federation where all units are supposed to be equal for the purposes of sharing benefits and burdens. The same may be said of the territories ceded to the British Government by the Indian States in the past. The Davidson Committee, therefore, recommended that the payment of these tributes should be abolished under certain conditions, and adjustments may be made in respect of them. Regarding "ceded territories" of the States, it recommended that compensation should be paid by the Federal Government to the States concerned, taking the net values of such territories as estimated at the time of cession as a basis for the purpose.

**Immunities enjoyed by the States.**—But the States also enjoy certain immunities or advantages which have a money value. They may be stated as under:—

Customs  
Duty

(a) Certain States levy their own Customs Duty and enjoy immunity from contribution to the Central Customs Revenue. The value of this privilege is estimated to be approximately Rs. 182'42 lakhs a year.

Salt

(b) Certain States manufacture their own salt and enjoy immunity from contribution to the Central Salt Revenue. This involves the sum of Rs. 46'06057 lakhs per year.

Posts and  
Telegraphs

(c) Certain States enjoy certain immunities in respect of the Posts and Telegraphs in the shape of free carriage of official State correspondence by the

\* Ramasubrahmanyam, K. V. ; "The Evolution of Indian Constitution" p. 130.

Postal Department, and of free annual grants of service stamps. The first involves a sum of Rs. 714,640 and the second involves the sum of Rs. 312,385 per year. Besides, certain States carry on their own postal system, having entered into conventions with the Government of India, while others do so without having entered into any conventions with that Government. The Committee could not estimate the money value of these.

(d) Certain States enjoy the privilege of having "Free Import of Goods in Bond." This privilege is particularly enjoyed by the State of Kashmir under the Treaty of 1870. The value of this, as estimated by the Davidson Committee, is Rs. 25 lakhs a year.

Free Imports  
of Goods in  
Bond

(e) Certain States enjoy certain rights regarding "Coinage and Currency."

Coinage and  
Currency

"The number of States that possess rights of coinage are less than twenty and of these only seven deserve serious consideration, as having a right to mint coins of higher value, and only Hyderabad possesses a paper currency which produces considerable profit."\*

The Committee does not recommend buying up of this privilege except in the case of Hyderabad as it thinks that the exercise of this right by the other States is not likely to involve them in any serious competition with the Federation. The value of the privilege enjoyed by Hyderabad is estimated to be about Rs. 17 lakhs per year. The total value of the immunities of all the States has been estimated to be about Rs. 225 lakhs a year.

Thus it will be understood that the Indian States owe something to the Government of India and the latter owe something to the Indian States. In the mutual adjustment, account must be taken of the credit and the debit sides. The Committee's recommendation, therefore, was that the value of the privileges and immunities enjoyed by the States should be set off against the value of the contributions, tributes, and the ceded territories. In other words the States should receive benefit only to the extent of the excess of the cash value of the latter over the former. A State, however, on joining the Federation can surrender a particular immunity or immunities. In this case there will be no debit against it to be availed of by the Federation. Moreover, the "immu-

The debit  
and credit  
balance of  
the States

Method of  
Payment

\* N. Raja Gopala Aiyangar: The Government of India Act, 1935, p. 188.

Loss to the Federation	nity debit" is not to be paid in cash by a State when it joins the Federation, but it is available only for setting off purposes against the money value of its claims. Thus if a State has not got any claim of that kind, it cannot be called upon to pay off its "immunity-debit," and thus leaving it to benefit to that extent. This means a definite loss to the future Federation of India as the value of the "immunity debit" due to the Federation is estimated to be more than Rs. 255 lakhs while the total claims of the States valued at are Rs. 117 lakhs a year. Even to the extent of full Rs. 117 lakhs the Federation cannot gain, because the States are treated in their individual capacities and as such are concerned only with their own immunities and claims. In the case of the States which have both credit and debit, there can be a set off, but where there is only credit, there cannot be any set off and the Federation suffers. In other words the creditor States are entitled to payment, but the debtor States have no liability to pay off to the Federation. This is calculated to work as inducement to certain States like Kashmir, Mysore, and Baroda, which gain financially by joining the Federation. The general recommendation of the Committee about the tribute is that in the case of the States where they exceed five per cent of their total annual revenues, they should go to the extent of the excess unconditionally whether the States join the Federation or not. This involves a sum of about Rs. 10 lakhs. Regarding the remainder of the tributes, the Committee recommends conditional abolition on the States joining the Federation. The abolition in this case is also gradual, taking effect <i>pari passu</i> with the enjoyment by the Provinces of their share of Income-tax under S. 138, and in any event not later than a period of twenty years from the commencement of the Federation. In other words, the period in which the tributes are to be abolished is to correspond to the period during which it is proposed to defer the full assignment to the Provinces of a share of Income-tax, subject to the maximum time limit of twenty years. Evidently the Income-tax paid by the Provinces and the "tributes" paid by the States have been considered analogous and, therefore, in the matter of receiving the share of Income-tax the Provinces, and in the matter of remission of the
Inducement to the States	
Abolition of contributions exceeding five per cent of the total revenue of a State	
Gradual Abolition of the remainder within 20 years	
Income-tax and the Tributes considered analogous	

tributes the States, have been treated alike. It may be noted here that the Government of India (Distribution of Revenues) Order in Council 1936 prescribes a period of ten years for the purpose. This is, however, subject to the power of the Governor-General to enlarge the period in the interests of the financial stability of the Federation.

Ceded territories and tributes have been treated alike, and the above provisions also apply to the former. But according to the recommendation of the Committee, the payments in respect of such territories should be conditional, commencing after the entry of the States concerned to the Federation.

**States' Maritime Customs.**—The Indian States enjoying a right to levy their own Sea Customs present a very difficult problem as far as their entry to the Federation is concerned. The total sum involved in respect of this right is Rs. 182 lakhs per annum, and the States concerned seem reluctant to give up this right. But the retention by any unit of the Federation of its own Sea Customs receipts runs counter to the ideal of a true Federation. The States' Enquiry Committee, therefore, observed :

"If, therefore, the port-owning States are to enter the Federation, as every one must desire that they should, room must be found for a compromise in which ideals and logic would yield in some measure to hard facts. An arrangement whereby the Maritime States were at least enabled to retain in their own hands the value of the duties on goods imported through their ports for consumption by their own subjects, even though it would involve some slight diminution of Federal Revenues, might well be accepted in a Federal scheme embracing so many diverse elements. In recommending that it be considered how far such an arrangement would be practicable, we do not exclude the possibility of modifications or adjustments to meet local circumstances."\*

The Joint Parliamentary Committee wrote in this connection :—

"... We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the Maritime States which have a right to levy Sea Customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognize that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system."†

Actual  
Period fixed  
by the Order  
in Council

Same prin-  
ciples also  
apply to the  
Ceded  
Territories

Davidson  
Committee's  
observations

J. P. C.'s  
recom-  
mendations

\* States Enquiry Committee Report. † Para. 265.



**Land Customs Duties imposed by the Indian States.**—It is desirable that there should be free internal trade in a Federation, the units considering themselves members of a sort of *Zollverein*. Only the Federal Government should have power to impose tariffs and restrictions on trade. In India, however, many States, notably Kashmir, enjoy this privilege and derive considerable revenue from it, which they can ill afford to lose. The J. P. C. observed on this point:

J.P. C.  
Observations

"We recognize that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the States."\*

**Proposals in the Act.**—The recommendations of the Davidson Committee, supported by the J. P. C. as they are, have been embodied in the new Act, though they make the system rather complex and anomalous, and involve the Federation in a loss which is estimated to be approximately rupees one crore.

His Majesty's Power to receive payments

**Payments from or by the Indian States.**—All payments in respect of loans or other dues from any Indian State, which formed part of the revenues of India before the passing of this Act, are to be received by His Majesty. If His Majesty so directs, they shall be placed at the disposal of the Federation. His Majesty, however, can remit at any time the whole, or any part of any such contributions or payments, if he thinks fit to do so.†

Time limit for the remission of contributions

**Remission of States' Contributions.**—His Majesty is empowered, in signifying his acceptance of the Instrument of Accession of a State, to agree to remit over a period not exceeding twenty years from the date of the entry of the State to the Federation any cash contributions which are payable by

\* Para. 264. † Sec. 146.



that State. Moreover, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act in return for specific military guarantees or for the discharge of the State from obligations to provide military assistance, that State shall receive such sums as in the opinion of His Majesty ought to be paid in respect of any such cession, if His Majesty directs to that effect while signifying his acceptance of the Instruments of Accession of that State. Where these payments are for military guarantees, these military guarantees shall be waived. Such a direction must secure that such remission of payment shall not be made until the Provinces have begun to receive their shares of the Income-tax; and also that the remission shall be complete before the lapse of twenty years from the date of entry of the State in the Federation or before the end of the second prescribed period mentioned in the provision in respect of Income-tax, whichever first occurs. Besides no contribution shall be remitted except in so far as it exceeds the value of any privilege or immunity enjoyed by the State. Account shall be taken of the value of any such privilege or immunity in fixing the amount of any payments in respect of ceded territories. These provisions also apply in the case of any cash contributions the liability for which has been discharged by payment of a capital sum before the passing of this Act. In such a case His Majesty may agree that such capital sum shall be repaid either by instalments or otherwise. Such repayments are to be considered remissions for the purposes of these provisions.

Compensation in lieu of Ceded Territories

Military guarantees to be waived

Condition for the remission to take effect

Amount to be permitted

Immunities to be taken account of

Capital Payments

Meaning of Cash contributions

“Cash Contributions,” as used here, mean the periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the help of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or for the maintenance of a special force for service, or of local military force or Police, or in respect of the expenses of an agent, contributions fixed on the creation or restoration of a State, or a re-grant or increase of territory, for grants of land on perpetual tenure or for equalization of the value of exchanged territory, and contributions formerly payable to another State

but now payable to His Majesty by right of conquest, assignment or lapse.

Privileges  
and Immuni-  
ties enjoyed  
by the  
Indian  
States

“**Privilege or Immunity**” means any such right, privilege, advantage or immunity of a financial character including (i) rights, privileges or advantages respecting the levying of sea customs or the production and sale of untaxed salt ;

(ii) sums receivable in respect of the surrender of the right to levy internal customs duty, or to manufacture salt, or to tax salt or other goods in transit, or sums receivable in lieu of grants of free salt ;

(iii) the annual value to the Ruler of any privilege or territory granted in respect of the surrender of any right mentioned above ;

(iv) the privileges in respect of free service stamps for the free carriage of state mails on government business ;

(v) the privilege of entry free from customs duty of goods imported by sea and transported in Bond to the State in question ; and

Immunity  
surrendered  
at the time  
of accession  
of the States

(vi) the right to issue currency notes. A right, privilege, advantage or immunity which has been surrendered upon the accession of a State, or one which in the opinion of his Majesty ought not to be taken into account for any other reason, even if it pertains to the above mentioned privileges or immunities, shall be excluded from that class for the purposes of the above-mentioned provisions.\*

Supply of  
necessary  
particulars  
in respect of  
privileges  
and  
immunities

It is further laid down that an Instrument of Accession of a State shall not be considered by His Majesty suitable for accession unless it gives necessary particulars for giving due effect to the provisions mentioned above and to the provision in respect of setting of value of privilege and immunities against share of taxes to be assigned to such a State, and particularly to the provision for determining the value of any privilege or immunity with fluctuating or uncertain value.† When any payment or distribution of the net proceeds of any duty or tax is made to a Federated State by the Federation in any year, the value for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue

\* Sec. 147 (1,2,3,4,5,6). † Sec. 147 (7).

from a similar duty or tax or from goods of the same kind, if it has not been otherwise taken into account, be set off against the payment or distribution made by the Federation, if and in so far as it is provided by a Federal Act.\* It is provided that any payment made under the above-mentioned provisions or any payment heretofore made to any State by the Governor-General in Council or by any Local Government under an agreement made with that State before the passing of the Act shall be charged on the Federal revenues or the Provincial revenues as the case may be.†

Annual  
set offs

**General Remarks.**—Although the above mentioned arrangements obviously seem to be financially advantageous to the States, yet some people think otherwise and are critical of them. Prof. K. T. Shah thinks that these arrangements are discriminatory in favour of the Provinces in regard to subventions from Federal revenues to the deficit Provinces, the remission of debts due from them, distribution of certain taxes, while certain additional liabilities are imposed upon the Federated States.‡

Alleged  
Discrimina-  
tion in fav-  
our of the  
Provinces

Mr. M. K. Varadarajan also states :

"In conclusion, it may be stated that it is indisputable that the States, in acceding to the Federation, are sacrificing some of their resources which, but for their accession, they would themselves retain. It is true that by doing so they will participate in the larger political life of India and promote the cause of Indian unity and Indian nationalism. None the less it is equally true that, judged in terms of money, they are paying a heavy price for such unity." §

It may be stated in reply that in the very nature of things the Federal system of Public Finance in India cannot be logical or uniform. Anomalies are inherent in the very circumstances under which the Federation is expected to come into being. Account must be taken of the fact that the financial systems of the British Indian Provinces and the Indian States have so far been different, and the latter's anxiety to concede control to the Federation over as small a sphere of administration as possible precludes the possibility of evolving a uniform system in the near future. Moreover while the Provinces, being parts of British India could be treated and were willing to be treated by the framers of the Act in the way considered

\* Sec. 149 † Sec. 148 ‡ The Federal Structure, p 421.

§ Varadarajan, M. K. : The Indian States and the Federation, page 131-32.

No injustice  
to the States

necessary in the interests of the general advance, the States in view of their claims to internal sovereignty could not be, treated nor were they willing to be treated, in the same way. In the actual scheme they have not allowed the framers to deal with their finances in the way considered necessary for the general advance, but insisted and have secured the recognition of their interests and rights. The control of the Federation over their finances would extend to a limited sphere, and even that will depend on the terms of the individual Instruments of Accession. Under the circumstances they can have no claim to any further financial help from the Federation than has been allowed, and can have no ground to complain against this alleged discriminatory treatment.

Against the opinion of Professor Shah and Mr. Varadarajan may be quoted the opinion of Dr. Sir Shafaat Ahmad Khan :

Incidence of  
taxation  
unfair to the  
Provinces

"The financial scheme evolved by the Round Table Conference is defective from the point of view of equality of Federal units. The incidence of taxation in the two classes of units varies considerably, and British Indian Provinces are called upon to pay a disproportionate amount of Federal expenditure . . . . . The cost to British India of attaining national unity and solidarity is not too high for the realization of a dream of twenty centuries."\*

According to Mr. M. K. Muniswami :

"Ultimately the position of some of the States would be similar to the position of 'Deficit Provinces' to be subsidised by the Federation. We may derive such consolation as we may from the observations of the Davidson Committee that 'By the very fact of their entry into the Federation, the States make a contribution which is not to be weighed in golden scales; if after every adjustment has been made there is still a substantial balance against British India it ought not to matter.' Thus the States bear only the burden of indirect taxes and of a military force for the defence of India costing them a paltry amount (two crores and 38 lakhs). While the States may be permitted their inland customs duties or other privileges, there is no reason why they should not pledge their revenues as a security for federal loans especially in view of the fact that in the new Federal Legislature they will have enough pull."

Weighted in  
favour of the  
States

" . . . . . It is perhaps in the fitness of things that an anomalous Federation like the Indian should have an anomalous and unequal financial settlement . . . . . But as already pointed out it is weighted in favour of the units of the Federation, more particularly the State units . . . . ."†

In view of these opinions, and what has been said above, it may be asserted that the system of financial adjustments is favourable to the States.

\* The Indian Federation: p. 191.

The Indian Journal of Economics, April, 1936, pp. 442, 443.

**Miscellaneous Financial Provisions.**—No burden can be imposed on the revenues of the Federation or of the Provinces except for the purposes of India or some part of India. Nevertheless the Federation or a Province may make grants for any purpose irrespective of the fact that the Federal or the Provincial Legislature cannot make laws about it.\*

As far as the custody of public money is concerned, it is provided that the Governor-General or a Governor, as the case may be, exercising his individual judgment, may make rules securing that all public moneys shall, with any specified exceptions, be paid into the public account of the Federation or of the Province. These rules may prescribe or authorize some persons to prescribe the procedure regarding payment, withdrawal, and custody of moneys into the public account and any other matters connected with that.†

The following powers in respect of the Reserve Bank of India are to be exercised‡ by the Governor-General in his discretion :

(i) the appointment and removal from office of the Governor and the Deputy Governors of the Bank, the approval of their salaries and allowances and the fixing of their terms of office :

(ii) the appointment of an officiating Governor or Deputy Governor of the Bank ;

(iii) the supersession of the Central Board of the Bank and any action connected therewith ;

(iv) the liquidation of the Bank.

The Governor-General is to exercise his individual judgment in nominating Directors of the Reserve Bank of India and in removing any such Director. No Bill or amendment affecting the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India can be introduced in the Federal Legislature without the previous sanction of the Governor-General to be given in his discretion.§

The Federal property vested in His Majesty is exempt from all taxes imposed by any authority

Expenditure defrayable out of Indian revenues

The custody of Public moneys

Exercise by the Governor-General of certain powers with respect to the Reserve Bank

Previous sanction of the Governor-General to legislation in respect of Reserve Bank, Currency and Coinage

\* Sec. 150. † Sec. 151. ‡ Sec. 152. § Sec. 153.

Exemption  
of certain  
public  
property  
from  
taxation

within a Province or a Federated State, except if it is otherwise provided by a Federal law, but any such property which was liable to such a tax before April 1st, 1937, shall continue to be so, as long as that tax continues, until it is otherwise provided by a Federal Act.\*

Exemption  
of Provincial  
Govern-  
ments and  
Rulers of  
Federated  
States in  
respect of  
Federal  
taxation

Similarly a Provincial Government and the Ruler of a Federated State are not liable to Federal taxation in respect of lands or buildings situated in British India or income accruing, arising or received in British India. But if a trade or business of any kind is carried on by or on behalf of such a Provincial Government in any part of British India outside the Province or by a Ruler in any part of British India, the above-mentioned exemption does not apply to it. Moreover a Ruler of a State is not exempted from the payment of Federal taxation in respect of his personal property in lands, buildings or other personal income. This provision, however, does not affect any exemption from taxation enjoyed as a matter of right at the time of the passing of this Act by the Ruler of an Indian State regarding Indian Government Securities issued before that date.†

Adjustment  
in respect of  
certain  
expenses and  
pensions

Provision is also made regarding proper adjustment in respect of certain expenses and pensions.‡ It is laid down that where the expenses of any court or commission, or the pension of a person who has served under the Crown in India are charged on the Federal or the Provincial revenues, and in the case of the Federal revenues the court or commission serves any of the separate needs of a Province, or the person in question has served wholly or in part in connection with the Provincial affairs, such contribution in respect of the expenses or pension shall be paid to the Federal revenues from the Provincial revenues as may be agreed, or in the absence of the agreement, as may be determined by an arbitrator to be appointed by the Chief Justice of India. Similarly in the case of a charge on the Provincial revenues, if the court or commission serve any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the Federal affairs or the affairs of another Province, such contribution in respect of the expenses or pension shall be paid to that Province from the revenues of

\* Sec. 154. † Sec. 155. ‡ Sec. 156.

the Federation or of the other Province, as may be agreed, or in the absence of agreement, as may be determined by an arbitrator to be appointed by the Chief Justice of India.

The Federation and the Provinces must provide sufficient moneys in the hands of the Secretary of State for making payments in respect of any liability which has to be met out of the Federal or the Provincial revenues as the case may be. Similarly the Secretary of State and the High Commissioner for India must receive sufficient money to pay all pensions payable out of the Federal or the Provincial revenues, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.\*

Supply of  
Funds to the  
Secretary of  
State

#### **Adjustment of Monetary Relations with Burma —**

Burma was separated from India on April 1st, 1937. His Majesty in Council was empowered to make the necessary provisions for defining and regulating the relations between the monetary systems of India and Burma and also for giving effect to any arrangements with respect to financial relations made before April 1st, 1937, with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other person. Any sum required by such an Order in Council to be paid by the Federation is charged on the Federal revenues. His Majesty in Council can also make provisions for the grant of relief from any Federal tax on Income in respect of income taxed or taxable in Burma. Lastly, with the purpose of preventing undue disturbance of trade between India and Burma, in the period immediately following the separation of India and Burma and also for safe-guarding the economic interest of Burma during this period, His Majesty may by Order in Council give necessary directions regarding the duties which are to be levied on goods imported into or exported from India or Burma, and connected matters.† Effect has been given to these provisions by the India and Burma (Burma Monetary Arrangements) Order, 1937. Burma is kept under the currency system of India. The Reserve Bank of India is to perform similar functions in relation to Burma which it performs in relation to India subject to proper adjustments of the profits accruing from currency and note issue between

Power of  
His  
Majesty

Relief in  
respect of  
Income-tax

Customs  
Duties on  
India Burma  
trade

\* Sec. 157. † Sec. 158, 159, 160.



Share of  
Burma  
in the Public  
Debt of  
India

the Government of Burma and the Government of India. Regarding share of Burma in the Public Debt of India, provision is made by the Government of Burma (Miscellaneous Financial Provisions), Order 1937, in accordance with the recommendations of the Amery Tribunal. Under this Order the Government of India was to receive from the Government of Burma a sum of Rs. 3,23,01,000 in respect of the year 1937-38. The sum in respect of subsequent years is to be fixed by further Orders in Council.

J. P. C.'s  
Observation

**Additional Cost of Federation.**—Another important aspect of Federal finance of India, as has been pointed out before, is the additional expenditure involved in the proposed constitutional changes. In respect of this, the J. P. C. observed :

" We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper ; that is to say, the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates, or the establishment of the Federal Court. These would amount to  $\frac{3}{4}$  crore ('56) per annum, attributable to the establishment of Provincial Autonomy, and another  $\frac{3}{4}$  crore ('56) per annum, attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes. The amount, under present financial conditions, is by no means negligible, but is not of very serious dimensions. There are, however, apart from the new overhead charges, certain other factors affecting the financial position which it is necessary to pass in review. The most important of these is the separation of Burma ; and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole, the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2'2) per annum, less the yield of any revenue duties on imports from Burma, which may be introduced from the date of separation."\*

Loss on  
account  
of the  
separation  
of Burma

The actual loss to the Indian Exchequer consequent on the separation of Burma from India in the year 1937-38 was Rs. 4.26 lakhs.

According to Sir Malcolm (later Lord) Hailey, the estimated increased expenditure of the Central Government in respect of the constitutional changes is as under:—

Lord  
Hailey's  
Memoran-  
dum

Increased expenditure in respect of the Federal	
Court and the Federal Legislature ... ..	'56 million pounds
Reduction of Currency receipts on account	
of the establishment of the Reserve Bank...	'75 million pounds
Disappearance of receipts from opium ...	'47 million pounds
Loss on account of the separation of Burma ...	2'00 million pounds
Grants to the deficit Provinces ...	1'00 million pounds
	... 4'78 million pounds.

\* Para. 267.



The total new expenditure mentioned in Sir Malcolm (now Lord) Hailey's Memorandum is 6 million pounds. This is a fairly gloomy outlook and the pertinent question was asked if this new expenditure could be provided for, or that the proposed Federation will split on the rock of finance. The position was carefully examined by Sir Otto Niemeyer, who wrote:

"On a general review of the existing tendencies, I should conclude that the budgetary prospect of India, given prudent management of her finances, justify the view that adequate arrangements can be made step by step to meet the financial implications of the new Constitution. A change of constitutional and administrative arrangements cannot of course in a moment after the general financial position or enable all conceivable financial desires to be met, but I see no reason why a cautious but a steady advance should not be achieved."

Sir Otto  
Niemeyer's  
observation

He, therefore, recommended that—

"His Majesty's Government may safely propose to Parliament that Part III of the Government of India Act, 1935, should be brought into operation a year hence."

Sir Otto's  
Recommendation

Thus Provincial Autonomy was inaugurated on April 1, 1937. It remains to be seen how the Federation fares financially, when it is established:

**Provisions in respect of Borrowing.**—Special provision is made in the Act for borrowing by the Secretary of State, the Federal Government, and the Provincial Governments. All powers\* vested in the Secretary of State in Council of borrowing on the security of the revenues of India have ceased since April 1, 1937, when the Provincial part of the Act commenced. But during the period of transition till the establishment of the Federation of India, the Secretary of State may, within the prescribed limits contract sterling loans on behalf of the Governor-General in Council, if the Parliament so provides by passing an East India Loans Act. Subject to this provision, the Federation can borrow upon the security of the Federal revenues and give guarantees within the limits fixed by an Act of the Federal Legislature.† Similarly the Provinces can borrow upon the security of the Provincial revenues and give guarantees within limits fixed by the Acts of the Provincial Legislatures.‡ Within the limits mentioned above and subject to such conditions that may be imposed by it, the Federation may make loans to the Provinces or give guarantees in respect

The borrowing  
powers  
of the Secretary  
of State  
in Council

Borrowing  
by the Federal Government

Borrowing  
by the Provincial Governments

Federal  
loans to the  
Provinces

\* Sec. 161. † Sec. 162. ‡ Sec. 163.

Limits on  
the borrow-  
ing powers  
of the  
Provinces

Disputes to  
be decided  
by the  
Governor-  
General

Loans by  
the Federal  
Government  
to the Fede-  
rated States

Application  
of Colonial  
Stock Acts to  
stocks issued  
by the Fede-  
ration

Instructions  
to the Gover-  
General

of Provincial loans. Sums required for making loans to the Provinces are to be charged on the Federal revenues. The Provinces cannot borrow outside India without the consent of the Federation. Nor can they raise any loan if they still owe something in respect of a loan made to them by the Federation or the Governor-General in Council, or in respect of a loan about which a guarantee has been given by the Federation or by the Governor-General in Council. This consent may be made to depend on conditions which the Federation may think fit to impose, but it cannot be withheld unreasonably. If sufficient cause is shown the Federation cannot refuse to make a loan to, or to give a guarantee in respect of a loan raised by a Province, or impose any unreasonable condition. If there is any dispute about this, the Governor-General shall finally decide it at his discretion.\*

As in respect of the Provinces, so in respect of the Federated States, the Federation may make loans to them subject to conditions which it may think fit to impose. And subject to fixed limits as mentioned above, it can give guarantees in respect of loans raised by any Federated State.†

The Colonial Stock Acts, 1877 to 1900, apply‡ to the sterling stocks issued after the establishment of the Federation though the procedure laid down in Sec. 20 of the Colonial Stock Act, 1877, in respect of bringing proceedings is not compulsory in this case. Any conditions prescribed by the Treasury under Sec. 2 of the Colonial Stock Act, 1900, are deemed to have been fulfilled in respect of such stock issued by the Federation until Parliament otherwise determines. And securities in which a trustee might invest trust funds before April 1, 1937, continue to be trust securities. These provisions introduce the necessary changes in respect of the borrowing powers of the Federation and the Provinces in consonance with the transfer of finance to the control of the popular Ministers, and the popular Legislatures both at the Centre and in the Provinces. The Governor-General, however, is instructed in his Instrument of Instruction to see that a —

"borrowing policy is not pursued which would in his judgment prejudice the credit of India in the money markets of the world."

\* Sec. 163. † Sec. 164. ‡ 165.

**Audit and Accounts.**—Under the old Constitution, audit and accounts in India, both Central and Provincial, were carried out by a combined staff under the Auditor-General. Audit of the accounts of the Secretary of State was carried out by the Auditor of Indian Home Accounts. The report of the former was presented to the Indian Legislature while that of the latter was presented to the Parliament. As finance is a transferred subject under the new Constitution, it is necessary that the Auditor-General of India should report to the Governments and the Legislatures in India, instead of the Secretary of State in Council. The J. P. C. recommended the continuation of the centralized system of Audit and Accounts though the Provinces were to be allowed to have their own systems if they so desired. The audit of the accounts of the offices of the Secretary of State and the High Commissioner, in the opinion of the Committee, should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature.\*

**The Auditor-General of India.**—The Act embodies these recommendations. It provides that there shall be an Auditor-General of India, to be appointed by His Majesty and removable from office only in the same way as a Judge of the Federal Court. His conditions of service are to be prescribed by His Majesty in Council, subject to the condition that he shall not be eligible for further office under the Crown in India after he ceases to be the Auditor-General. His salary or his rights in respect of leave of absence, pension or age of retirement cannot be varied to his disadvantage after his appointment. The salary, allowances, and pensions payable to or in respect of the Auditor-General are to be charged on the Federal revenues. The salaries, pensions, etc., of his staff are also to be paid out of the Federal revenues.†

He is to perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by an Order in Council or by rules made under it, or by any subsequent Act of the Federal Legislature varying or extending such an Order. But no such Bill or amendment can be introduced or moved without the previous sanction of the Governor-General in his discretion.‡ The accounts of the Federation must be

The Present  
System

J. P. C.'s  
Recommendations

Appointment

Conditions  
of Service

Salary, Allowances and  
Pensions

Powers and  
Duties

\* Paras. 396 and 397. † Sec. 166. ‡ Sec. 166 (3).

Power to  
issue direc-  
tions to the  
Provinces

Reports to  
be submitted  
to the Gover-  
nor-General  
and laid  
before the  
Federal  
Legislature

Appointment

Conditions  
of Service

Eligibility  
for appoint-  
ment as the  
Auditor-  
General of  
India

Appointment

kept in the form prescribed by the Auditor-General of India with the approval of the Governor-General. With a similar approval he may issue directions with regard to the methods or principles in accordance with which any accounts of the Provinces ought to be kept, and the Provincial Governments must obey these directions.\* The Auditor-General of India's reports relating to the accounts of the Federation are to be submitted to the Governor-General, who is to get them placed before the Federal Legislature. Similarly the reports of the Auditor-General of India or of the Auditor-General of a Province relating to Provincial accounts, are to be submitted to the Governor of the Province, who is to get them placed before the Legislature of the Province.†

**The Provincial Auditors-General.**—Provision is also made for the appointments of the Auditors-General for the Provinces. If a Provincial Legislature passes an Act after April 1, 1939, charging the salary of an Auditor-General for that Province on the Provincial revenues, His Majesty may appoint such an Auditor-General. The latter shall perform the same duties and the same powers in relation to the audit of Provincial accounts as the Auditor-General of India. This appointment however, cannot be made until after three years after the passing of the Provincial Act providing for the appointment. The above-mentioned provisions in relation to the Auditor-General of India in respect of salaries, duties, etc., are also applicable to the Auditor-General of a Province subject to the condition that the functions of the Federal Legislature and the Governor-General in that case are to be performed by the Provincial Legislature and the Provincial Governor in this case, and for "the revenues of the Federation" is to be substituted "the revenues of the Province. Moreover a Provincial Auditor-General is eligible for appointment as the Auditor-General of India.‡

**The Auditor of Indian Home Accounts.**—Provision is made in the Act for an Auditor of Indian Home Accounts. He is to be appointed by the Governor-General in his discretion and is removable from office in the same way and for similar reasons as a Judge of the Federal Court. The conditions of service for

\* Sec. 168. † Sec. 169. ‡ Sec. 167.

this officer are also to be prescribed by the Governor-General in his discretion, but his salary and rights in respect of leave of absence, pension or age of retirement cannot be changed to his disadvantage after his appointment. He shall perform such duties and exercise such powers in respect of transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules under an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order, but no Bill or amendment for this purpose can be introduced without the previous sanction of the Governor-General to be given at his discretion.

The Auditor of Indian Home Accounts shall work under the general superintendence of the Auditor-General of India. His report regarding transactions affecting the Federal revenues is to be submitted to the Auditor-General of India, who shall include it in his report to be submitted to the Governor-General. His report regarding transactions affecting the revenues of a Province having an Auditor-General of its own, is to be submitted to that Auditor-General. The latter shall include it in his report for submission to the Governor of his Province.

The expenses, including the salary, allowances and pension, of the Auditor of Indian Home Accounts are charged on the revenues of the Federation. Similar expenses of his staff are also to be paid out of the Federal revenues.

It is also provided in the Act that His Majesty in Council may require the Auditor of Indian Home Accounts to perform in respect of Burma wholly or partially the functions which he performs in relation to India. In that case he may make the necessary provision and fix the payments to be made from the revenues of Burma to the revenues of the Federation in respect of the above mentioned services.\*

**Audit of Accounts in respect of the Crown's functions regarding the Indian States.**—It is provided that the accounts relating to the discharge of the functions of the Crown in its relations with the Indian States shall be audited by the Auditor-General of India. These accounts concerning transactions in the United

Condition of Service

Functions

Report to be submitted to the Auditor-General of India or the Auditor-General of the Province

Expenses charged on the Federal revenues

Functions in respect of Burma

To be done by the Auditor-General of India

\* Sec. 170.

Kingdom shall be audited by the Auditor of Indian Home Accounts, who shall act on behalf of and under the general supervision of the Auditor General of India. The annual audit reports of these accounts shall be made to the Secretary of State for India by the Auditor-General.\*

Vesting of  
lands and  
buildings

For the  
purposes of  
the  
Provinces

For the  
purposes of  
the  
Federation

For the  
purposes of  
His  
Majesty's  
Government  
in the  
United  
Kingdom

Sale of this  
property

**Provisions in respect of Property.**—Special provisions in consonance with the new constitutional changes are laid down in the Act in respect of property, contracts, liabilities, and suits. The lands and buildings in a Province, which were vested in His Majesty before April 1, 1937 for the purposes of the government of India are now vested in His Majesty for the purposes of the government of that Province unless they were used at that time otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which are now the purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States. There is another saving in the case of lands and buildings formerly used or intended to be used for the above-mentioned purposes, or retained for future use for such purposes or for advantageous disposal by sale under a certificate of the Governor-General in Council or the Crown Representative. Other lands and buildings in the Province, and lands and buildings situated in India elsewhere than in a Province are vested in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States according to the purposes for which they were used before April 1, 1937. The lands and buildings situated elsewhere than in India, except those situated in Burma or Aden, are vested in His Majesty for the purposes of the Federal Government. But if they were used before April 1, 1937, for the purposes of the department of the Secretary of State in Council, they are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom.

The property of the last class cannot be sold or put to uses not connected with the discharge of the functions of the Crown in relation to India or Burma, except with the consent of the Governor-General. It

\* Sec. 171.

shall, however, be under the management of the Commissioners of Works. The contents of these buildings other than money or securities are also subject to these provisions. This is subject to the provision that such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General can be sold or put to uses not connected with the discharge of the functions of the Crown in relation to India or Burma without the consent of the Governor-General. Moreover the contents of these buildings shall be under the control of the Secretary of State. It is also provided that any question, which may arise within the next five years after April 1, 1937, as to the purposes for which lands and buildings are vested in His Majesty, may be determined by His Majesty in Council.\*

Management

The control of the Secretary of State

Decision of a dispute

Other property

Money and Public Accounts

Other property vests in His Majesty for the purposes of the Federal Government, or of the exercise of the functions of the Crown in its relations with Indian States, or of a Provincial Government as was the case before April 1, 1937. But all moneys that were in the public account under the custody of the Governor-General in Council before April 1, 1937, vest in His Majesty for the purposes of the Federal Government. And all credits and debits of the Local Government of any Governor's Province other than Burma in account with the Governor-General in Council are to be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

All other property, including money, securities, bank balances and movable property, vested in His Majesty but under the control of the Secretary of State in Council before April 1, 1937, is to vest after that date in His Majesty for the purposes of the Federal Government, the exercise of the functions of the Crown in its relations with the Indian States or of a Provincial Government, as the Secretary of State may determine keeping in view the relevant circumstances. And the Secretary of State is empowered to deal with this property in accordance with his decision.

Other property under the control of the Secretary of State before April 1, 1937

Arrears of any taxes outstanding before April 1, 1937 are to be considered as due to and are recoverable by the Federal Government or a Provincial Govern-

Arrears of taxes

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\* Sec. 172



Property  
accruing by  
escheat or  
lapse, or  
as *bona  
vacantia*

ment according as any of them is a Federal or a Provincial tax, respectively. This provision also applies to equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma\* (not being forces raised in Burma) except to property or arrears of taxes in Burma and Aden which was in the possession of or under the control of, or held on account of the Local Government of Burma or Aden immediately before 1st April, 1937.

It is provided in respect of any property in India accruing to His Majesty by escheat, lapse, or as *bona vacantia* for want of a rightful owner, that if such a property is situated in a Province, it vests in His Majesty for the purposes of the Government of the Province, and in other cases vests in His Majesty for the purposes of the Government of the Federation. Such a property if, when it accrued to His Majesty, was under the possession of the Federal Government, it is to vest in His Majesty for the purpose of that Government; and if it was under the possession of a Provincial Government, it is to vest in His Majesty for the purpose of that Government in accordance with the purpose for which it was used or held previously.†

Acquisition  
and sale of  
property

Saving in  
respect of  
the residence  
of the  
Governor-  
General or a  
Governor

The executive authority of the Federal Government and that of a Provincial Government include the grant, sale, disposition, or mortgage of any property vested in His Majesty, and the purchase or acquisition of property on behalf of His Majesty for their respective purposes, subject to any Act of the appropriate Legislature. But any land or building used as an official residence of the Governor-General or a Governor cannot be sold, nor the purposes for which it is being used can be changed, except with the concurrence in his discretion of the Governor-General or the Governor in their respective spheres.‡

Expressed to  
be made by  
the Gover-  
nor-General  
or a  
Governor

**Provisions in respect of Contracts.**—The executive authority of the Federal or of a Provincial Government extends over the making of contracts in their respective spheres. These contracts must be expressed to be made by the Governor-General, or by a Provincial Governor as the case may be. All such contracts and all assurances of property must be executed on behalf of the Governor-General or a Provincial Governor by

\* Sec. 173. † Sec. 174. ‡ Sec. 175.



persons authorised by him in an authorised manner. This is of course subject to the provisions of this Act regarding the Federal Railway Authority.\* Any contract made by the Secretary of State in Council before April 1, 1937, has effect as made on behalf of the Federation or a Province according to the purpose for which it was made, and can be enforced accordingly.†

Contracts made by the Secretary of State in Council before April 1, 1937

**Provisions in respect of Loans and Financial Obligations.**—All outstanding liabilities in respect of loans, guarantees, and other financial obligations of the Secretary of State in Council before April 1, 1937, which were secured on the Indian revenues are now liabilities of the Federation and are secured on the revenues of the Federation and all the Provinces. All enactments relating to these loans and guarantees, etc., have effect, the Secretary of State taking the place of the Secretary of State in Council and subject to other modifications deemed necessary by His Majesty in Council. The payment of principal or interest in respect of the securities on which interest is payable in sterling, being the liability of the Secretary of State in Council, is not subject to any deduction in respect of any taxation imposed by any Indian Law. All loans or financial obligations of any Local Government, *viz.*, a Provincial Government, secured upon the revenues of the Province before April 1, 1937, have become after that date the liabilities of and are secured on the revenues of that particular Province.‡

Financial obligations of the Secretary of State in Council before April 1, 1937

Sterling payments not subject to Indian taxation

Financial obligations of a Local Government

**Provisions in respect of Suits and Proceedings.**—The Governor-General, a Provincial Governor, the Secretary of State, and any person making or executing any contract on their behalf are not to be held personally liable in respect of any contract made before or after the passing of this Act.§ It is provided that the Federation or a Provincial Government may sue or be sued by the name of the Federation of India and the Provincial Government in relation to their respective affairs in cases where the Secretary of State in Council could sue or be sued before the passing of this Act. Rules of court made for the purpose are to provide that in cases of suits in the United Kingdom by or against the Federation, a Province, or the Federal Railway Authority, service of all proceedings may be effected upon the High Commissioner for India or upon a specified represen-

No personal liability

The Federation or a Provincial Government may sue or be sued

\* Sec. 175. † Sec. 177. ‡ Sec. 178. § Sec. 175 (4).

Suits in the  
United  
Kingdom

tative of the Federation, the Province, or the Railway Authority.\*

Suits against  
the Federa-  
tion, the  
Provincial  
Governments  
or the  
Secretary of  
State

Any proceedings, which before the passing of this Act could be brought against the Secretary of State in Council, can, in the case of a liability arising before April 1, 1937, or arising under any statute or contract passed or made before that date, including a supplementary contract; be brought against the Federation or a Province according to the subject matter, or at the option of the complainant against the Secretary of State. Any sum order to be paid by the Secretary of State by way of debt, damages, or costs in any such proceedings, and any expenses incurred by him, are to be paid out of the Federal or the Provincial revenues, as the case may be. In case of proceedings brought against the Secretary of State, the payment is to be made out of the Federal or the Provincial revenues as he may direct. In the case of proceedings that might be pending in the United Kingdom at the time of the commencement of the Provincial part of the Act, *viz.*, April 1, 1937, the Secretary of State in Council, if he is a party to these proceedings, is to be substituted by the Secretary of State. The provision in relation to the costs, etc., mentioned above also applies to these proceedings.

Sums or  
dered to  
be paid

Substitution  
of the  
Secretary of  
State for the  
Secretary of  
State in  
Council

Provision  
for suits to  
be brought  
in the  
United  
Kingdom

Any contract in respect of the Federal or the Provincial revenues made by or on behalf of the Secretary of State after April 1, 1937, may provide that proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State. Any payment ordered to be made by the Secretary of State is to be paid out of the Federal or the Provincial revenues, as the case may be. Such payments in respect of proceedings by or against the Secretary of State do not impose any liability, whatsoever, upon the Exchequer of the United Kingdom. These provisions do not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden other than those which are made the liabilities of the Federation under this Act, and also to contracts or liabilities for the purpose of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.†

Savings

\* Sec. 176. † Sec. 179.

**Contracts in connection with the Crown's Functions in its relations with the Indian States.**—Any contract made before April 1, 1937, by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States is deemed to have been made on behalf of His Majesty since that date. Any proceedings in respect of such a contract, which could previously be brought against the Secretary of State in Council can now be brought against the Secretary of State. Similarly the latter becomes a party in the place of the Secretary of State in Council in any proceedings in respect of such a contract pending in the United Kingdom or India. Any contract made after April 1, 1937, on behalf of His Majesty solely in connection with the exercise of the functions of the Crown in its relations with the Indian States are legally enforceable by or against the Secretary of State instead of the Secretary of State in Council. Any sum ordered to be paid by the Secretary of State including costs and expenses in connection with the above-mentioned proceedings are to be considered as sums required for the discharge of the functions of the Crown in its relations with the Indian States. Any sum that might be received by the Secretary of State in connection with these proceedings is to be paid or credited to the Federation.\*

Contracts deemed to have been made on behalf of His Majesty

The Secretary of State

Sums ordered to be paid

Sums receive

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\* Sec. 180.

## CHAPTER XIII

### THE FEDERAL RAILWAY AUTHORITY

The Transfer of Railways to Ministerial Control; the Federal Railway Authority; Qualifications of Members; Proceedings; Officers of the Authority; Powers and Functions of the Authority; Principles to be observed by the Authority; The Conduct of Business between the Authority and the Federal Government; Acquisition and Sale of Land, etc.; Finance of the Authority; Rates and Fares; The Federal Railway Authority and the Federated States; The Railway Tribunal; Construction and Reconstruction of Railways; Arbitration under Contracts; Railways in Non-Federating States; Official Directors of Indian Railway Companies; Establishment of the Authority; General Remarks.

#### **The Transfer of Railways to Ministerial Control.—**

The Federal Railway Authority is a new creation of the new Act. The administration of Railways is not a Reserved Department under the Act, but has been transferred to the control of the Federal Government under certain safeguards. It was made clear that—

Safeguards

“ Just as in the case of Finance, the constitution of a Reserve Bank, free from political influence in the determination of its policy, especially in the field of currency was made a condition of the transfer of Finance, so the creation of a Statutory Railway Authority, similarly free from political influence for the actual administration of the Railways, was indicated to be necessary before Railways could be transferred to Ministerial control.”

Ackworth  
Committee

Hammond  
Report

Deciison of  
the Consul-  
tative Com-  
mittee

The Ackworth Committee recommended the separation of Railway finance from general finance and the constitution of the Railway Board into an independent administration. Early in 1932 Brigadier-General Hammond was appointed to study the question. His report was considered by the Government of India and the Consultative Committee of the Round Table Conference at Delhi. It was decided by the majority to recommend for the provision of a Statutory Railway Board for the administration of Railways, though the functions, composition and powers of the Board were to be determined by an Act of the Federal Legislature and not by Parliament in the Constitution Act. It was stated in the White Paper that His Majesty's Government considered it essential that—

" While the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference."\*

The White  
Paper Pro-  
posal

A representative Committee, known as the Railway Board Committee, considered the whole question in London in June, 1933. Its report was examined by the J. P. C. who thought that the scheme outlined by the Committee provided a suitable basis for the administration of the Indian Railways subject to the conditions, that not less than three of the seven members of the proposed Authority shall be appointed by the Governor-General in his discretion, and that the Authority should not be constituted on communal basis. It further recommended:

The Railway  
Board  
Committee

J. P. C.'s  
Recommend-  
ations

" The powers which the Governor-General will possess of taking action in virtue of his special responsibilities (including, of course, that relating to any matter which affects the Reserved Departments) must extend to the giving of directions to the Railway Authority. Also his right, in the event of a breakdown of the Constitution, to assume to himself the powers vested in any Federal Authority must extend to the powers vested in the Railway Authority. We have considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act or by Indian legislation. There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible, both in composition and powers, with the body which will function after the establishment of the Federation, and we see no objection to the necessary steps being taken to this end in India. But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based, and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter should conform with these principles."†

It also recommended arbitration procedure as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of Railways owned and worked by the Indian States.‡

Arbitration  
Procedure

The actual provisions in respect of the Federal Railway Authority in the Act are based on the report of the Railway Board Committee, supplemented by the suggestions of the J. P. C. Details about the constitution and working of the

\* J. P. C., Para. 392; White Paper Introduction, Para. 74.

† J.P.C. Para. 393. ‡ Para. 395.

Actual Provisions	Authority are given in Part VIII of the Act, supplemented by the Eighth Schedule attached to the Act. It is provided in the Act that no Bill or amendment for supplementing or amending the provisions of this Schedule can be introduced in the Federal Legislature without the previous sanction of the Governor-General given in his discretion.
Composition	<b>The Federal Railway Authority.</b> —The Federal Railway Authority, to be constituted under the Act, shall be a body corporate, consisting of seven members, to be appointed by the Governor-General.*
Appointment	Out of these seven, not less than three are to be appointed by the Governor-General in his discretion. He is also empowered to appoint at his discretion one of these members to be the President of the Authority.†
The President	7 M. by 3 Dis P. Dis. 4 0 Total 5 yrs.
Terms of the Members	Of these original members, three are to be appointed for three years, but they are eligible for re-appointment for a further term of three years, or of five years. Other members are to be appointed for five years which is the usual period during which the members hold office. A member of the Authority thus appointed is also eligible for re-appointment for a further term not exceeding five years.‡ The Governor-General, exercising his individual judgment, can make rules to fill in temporary vacancies. He can also terminate the appointment of any member, if he is satisfied that a particular member is for any reason unable or unfit to continue to perform the duties of his office.§
Temporary Vacancies	
Experience ; Membership of the Legislature ; Service of the Crown	<b>Qualifications for Members.</b> —A person cannot be appointed a member of the Authority unless he is experienced in commerce, industry, agriculture, finance, or administration; or if he is or has been within the last twelve months a member of the Federal or any Provincial Legislature; or has been in the service of the Crown in India or has been a railway official in this country.
To be determined by the Governor-General	<b>Salary and Allowances.</b> —The members of the Authority are entitled to receive such salary and allowances as the Governor-General may determine by the exercise of his individual judgment. These emoluments of the members cannot be reduced during their terms of office.¶

\* Eighth Schedule to the Act. (1). † Sec. 182. ‡ Eighth Schedule (3). § Ibid (4). || Ibid (2). ¶ Ibid (5).

**Proceedings.** All acts of the Authority are to be carried out and all questions before it are to be decided in accordance with the majority vote of the members present and voting at a meeting of the Authority. In case of a tie, the person presiding over the meeting has a right to a second or casting vote.\* If a member of the Authority is in some way interested in any contract in respect of the Railways, he must at once make that clear to the Authority and must not take part in any consideration, discussion or vote on any question with respect to that contract. At any meeting of the Authority a person or persons deputed by the Governor-General for representing him may attend and speak but cannot vote.† Subject to these and other provisions of the Act, the Authority may make standing orders for the regulation of the proceedings and business, and may also change or revoke any such order.‡ It is also provided that the proceedings of the Authority shall not be invalidated on account of any vacancy or by any defect in the appointment or qualifications of any member.§

**Officers of the Authority.**—The Governor-General, exercising his individual judgment but after consultation with the Authority, shall appoint a person with experience in railway administration to be the Chief Railway Commissioner.|| This officer will be at the head of the executive staff of the Authority and shall be assisted in the discharge of his duties by a Financial Commissioner, to be appointed by the Governor-General, and some additional Commissioners, who must be persons with experience in railway administration.¶ The additional Commissioners are to be appointed by the Authority itself on the recommendation of the Chief Railway Commissioner. The latter cannot be removed from office except by the Authority and that, too, with the approval of the Governor-General, exercising his individual judgment. The Financial Commissioner cannot be removed from office except by the Governor-General, exercising his individual judgment. These officers have the right to attend any meeting of the Authority, while the Financial Commissioner has the right to enquire any matter touching finance to be referred to the Authority.§

Casting  
vote

Members'  
interest in  
contracts

The  
Authority's  
powers to  
Standing  
Orders

The Chief  
Railway  
Commis-  
sioner

The  
Financial  
Commis-  
sioner.

Additional  
Commis-  
sioners

\* Eighth Schedule (6) ; † *Ibid* (7) ; ‡ *Ibid* (8). § *Ibid* (9) ;  
|| *Ibid* (10) ; ¶ *Ibid* (11) ; § *Ibid* (12) ;



Regulation,  
construction  
maintenance,  
and opera-  
tion of Rail-  
ways

Undertakings  
in connection  
with Rail-  
ways

**Powers and Functions of the Authority.**—The Authority is to exercise the executive authority of the Federation in respect of the regulation, construction, maintenance, and operation of Railways. This authority includes the carrying on of such undertakings in connection with any Federal Railways, which it thinks expedient, and also the making and putting into effect of arrangements with other persons of such undertakings.

The object of this provision is to enable "the Federal Railway Authority to continue to carry on matters ancillary to the actual running of the Railways, as is done at the present time. As an example of this, the Railways may run road services as well as the actual Railways, or they may enter into agreements with other organizations to run road services in connection with other Railways; and in some cases at the present time the Railways work collieries for the purpose of supplying their needs in fuel. The object is to make it clear, that the Federal Railway Authority will have the same power of carrying on operations of that kind."\*

Safeguards

In the exercise of these powers, the Authority is subject to any relevant provisions of any Federal, Provincial or existing Indian law and of the law of any Federated State. Moreover the Federal Government is empowered to perform, if it thinks fit, the necessary functions in respect of the construction, equipment, and operation of Railways with the purpose of securing the safety both of the members and public and of persons operating the Railways. Such functions include the holding of inquiries into the causes of accidents by persons, independent of the Authority and of any Railway Administration. The officers of the Federal Government performing these functions are not subject to the powers vested in the Authority in relation with the Railway Services of the Federation.†

Power of the  
Federal  
Government  
to hold en-  
quiries, etc.

The Autho-  
rity to act  
on business  
principles

Provision for  
Expenditure

**Principles to be observed by the Authority.**—The Authority is enjoined, while discharging its functions, to act on business principles, paying proper regard to the interests of agriculture, industry, commerce, and the general public. In particular, it must make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable. The Authority in the discharge of its functions is to be guided by such instructions on questions of policy, as may be given to it by the Federal Government. If there is any dispute whether a particular question is or is not a question of policy, the decision

\* Parliamentary Debates. † Sec. 181.



of the Governor-General given in his discretion is to be final.\* The Federal Government is also enjoined to discharge its functions with respect to Railways on business principles paying due regard to the interests of agriculture, industry, commerce, and the general public. This provision, however, does not limit the powers of the Governor-General in respect of his Responsibilities and to his duty as regards certain matters to exercise his function in his discretion or by the exercise of his individual judgment. These powers apply regarding matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority in respect of those matters were the functions of the Federal Ministers. He is authorized to issue to the Authority necessary directions regarding any matter involving any of his Special Responsibilities, or any matter regarding which he is required to act in his discretion or by the exercise of his individual judgment. The Authority must obey any such directions.†

**The Conduct of Business between the Authority and the Federal Government.**—The Governor-General, exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Railway Authority. These rules must make provision for requiring the Authority to send to the Federal Government information regarding such business as may be specified in the rules, or as the Governor-General may otherwise require it to do so; and also for requiring the Authority and the Chief Executive Officer to bring to the notice of the Governor-General any matter under their consideration which might involve any of the Special Responsibilities of the Governor-General.‡

**Acquisition and Sale of Land, etc.**—Except in such classes of cases as may be specified in the regulations to be made by the Federal Government, the Authority cannot acquire or dispose of any land. When it is necessary for it to acquire compulsorily any land for the due discharge of its functions, the Federal Government shall cause that land to be

Instructions by the Federal Government on questions of policy

The Federal Government should also perform its functions on business principles

Special powers of the Governor-General also apply here

Rules of business

Special Responsibilities of the Governor-General

The Authority cannot acquire or dispose of land

\* Sec. 183. † Sec. 183 (3 & 4). ‡ Sec. 184.

Land to be  
acquired  
through  
Federal  
Government

acquired on behalf of and at the expense of the Authority. Contracts made by or on behalf of the Authority are enforceable by or against the Authority and not by or against the Federation. The Authority may sue or be sued in the same way as a Railway Company. This is subject to any provision which may be made hereafter by an Act of the Federal Legislature. This provision regarding contracts does not apply in relation to any contract which is supplemental to a contract made before the constitution of the Authority. Such a contract may be enforced in the same way as the principal contract. The Authority can also make working agreements and carry out working agreements made with any Indian State, or person owning or operating any Railway in India, or in the territories adjacent to India regarding the persons by whom and the terms on which any of the Railways in question are to be operated.\*

Contracts

Working  
agreements

The Railway  
Fund

**Finance of the Authority.**—The Authority shall establish, maintain and control a fund to be known as the Railway Fund. All moneys received in the discharge of its functions by the Authority, whether on revenue account or on capital account or out of the Federal Revenues, must be paid into that Fund. And all expenditure, whether on revenue account or on capital account, required for the discharge of its functions by the Authority shall be met out of that Fund. But the Authority can establish and maintain separate provident funds for the benefit of persons who are or have been employed in connection with the Railways.

The Provi-  
dent Funds

Expenditure\*  
of the  
Authority

The income of the Authority on revenue account in any financial year is to be applied in meeting working expenses, payments due under contracts or agreements to Railway undertakings, paying pensions and contributions to provident funds, repaying to the revenues of the Federation so much of any pension and contributions to provident funds, charged by this Act on those revenues, as is attributable to service on Railways in India, making due provision for maintenance, renewals, improvements and depreciation, making to the Federal Revenues any payments as interest which it is required to pay under the Act, and defraying other expenses properly chargeable against revenue in that year.

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\* Sec. 185

Any surpluses on revenue account in the accounts of the Authority are to be divided between the Federation and the Authority in accordance with a scheme to be prepared by the Federal Government. This scheme can be reviewed from time to time. Until such a scheme has been prepared, distribution will be done in accordance with the principles which, before the establishment of the Authority, regulated the application of surpluses in Railway accounts. Any sum apportioned to the Federation in this way is to be transferred to it and shall form part of the Federal revenues. The Federation may provide any sum of money on revenue account or capital account for the purposes of the Railway Authority. Such a sum is to be considered to be expenditure and is to be shown as such in the estimates of expenditure laid before the Federal Legislature.\*

Division of  
Surpluses  
between the  
Authority  
and the  
Federation

The Authority shall be deemed to be owing to the Federation any sum that may be agreed or, in the absence of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of moneys provided either before or after the passing of the Act out of the revenues of India or the Federal revenues for capital purposes in connection with Railways in India, exclusive of Burma. The Authority shall pay out of their income on revenue account to the Federation interest on that amount at the rate that may be agreed or determined in the way mentioned above, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme to be so agreed or determined. The Authority can also make payments to the Federation in reduction of the principal of any such amount out of moneys other than receipts on revenue account. It is also provided that where the Secretary of State in Council has assumed or incurred any obligation in connection with any such Railways, he shall be deemed to have provided for the purposes mentioned above an amount equal to the capital value of that obligation as shown in the accounts of the Government of India before the Authority is established.

Debt of the  
Railway  
Authority to  
the Federation

Payment of  
interest and  
capital

Obligation of  
the Secretary  
of State

The Authority must repay to the Federation any sums defrayed out of the Federal revenues in respect of any debt, damages, costs or expenses in connection

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\* Sec. 186.

Payment in respect of debt, damages, costs or expenses

Expenses of the Railway Police Forces

Investment of surplus money

Money held by the Governor-General

The Reserve Bank of India to act as the banker of the Authority

with any proceedings against the Federation or the Secretary of State in respect of Railways in India. The Authority is also required to pay to any Province or Indian State sums of money to cover the expenses incurred by it for providing a Police Force required for the maintenance of order on the premises of the Federal Railways. Any question in respect of the amount of any such expenses between the Authority and a Province or a State is to be determined by the Governor-General in his discretion.\*

Subject to the conditions that may be prescribed by the Federal Government, the Authority can invest moneys in the Railway Fund or any provident fund which are not required for the time being to meet expenses, and may also transfer and realize investments made by them.† The Authority is not entitled by any of the above-mentioned provisions to require that any sum of money held by the Governor-General in Council before the establishment of Authority on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by it. It may, however, require from time to time the transfer to themselves of as much of any of the above-mentioned funds as may be required to meet expenditure chargeable to any of those funds. In such a case the Federal Government shall credit each such fund with interest on the untransferred balance of that fund at a rate agreed upon or determined by the Governor-General in his discretion. The part of any such fund attributable to the Railways of Burma is excluded from the funds to which the above-mentioned provision applies.‡

The Authority is required to entrust all their money, that is not immediately needed, to the Reserve Bank of India, and also to employ it as its agent for all transactions in India relating to remittances, exchange and banking. The Bank is to perform these functions on the same terms and conditions upon which it performs similar functions for the Federal Government.§ The income, profits or gains of the Authority are not subject to Indian income-tax or supertax.||

\* Sec. 187. † Sec. 188. ‡ Sec. 189. § Eighth Schedule, 16.  
|| Ibid, 15.

The accounts of the receipts and expenditure of the Authority must be audited and certified by or on behalf of the Auditor-General of India. A report of the Authority's operations in the preceding year and a statement of accounts in a form approved by the Auditor-General must be published annually by the Authority.\*

Accounts of  
the  
Authority  
to be audited  
by the  
Auditor-  
General  
Annual  
Reports

**Rates and Fares.**—In order to advise the Authority in connection with any dispute between persons using, or desiring to use a Railway and the Authority in respect of rates or traffic facilities, a Railway Rates Committee may from time to time be appointed by the Governor-General.† It is further provided that a Bill or amendment making provision for regulating the rates or fares to be charged on any Railway cannot be introduced or moved in the Federal Legislature except on the recommendation of the Governor-General.‡

The  
Railway  
Rates  
Committee

**The Federal Railway Authority and the Federated States.**—The Federal Railway Authority and the Federated States must exercise their powers in respect of Railways with which they are concerned in a way so as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including through traffic at through rates. Unfair discrimination by the granting of undue preferences or otherwise, and unfair or uneconomic competition between the different Railway Systems must also be avoided.§

Affording of  
mutual  
traffic  
facilities

Discriminat-  
ory Treat-  
ment for-  
bidden

Any complaint by the Authority against a Federated State or *vice versa* on the ground that the above-mentioned provisions have not been complied with is to be made to and determined by the Railway Tribunal.|| It shall also determine any complaint made by a Federated State that a direction in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminal charges, given to it by the Authority discriminates unfairly against the Railways of the State or imposes on the State an obligation to afford facilities which are not reasonable.¶

Complaints  
to be made  
to the  
Railway  
Tribunal

**The Railway Tribunal.**—The Railway Tribunal, is to consist of a President and two other persons. They are to be selected to act as such as in each case by

Composition

\* Sec. 190. † Sec. 191. ‡ Sec. 192. § Sec. 193. (1)

|| Sec. 193, (2). ¶ Sec. 194.

Members  
and the  
President

Governor-General in his discretion from a panel of eight persons appointed by him in his discretion. These persons must possess railway administrative, or business experience. The President of the Tribunal must be one of the Judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consulting the Chief Justice of India. He shall hold office for at least five years as may be specified in the appointment. He shall be eligible for re-appointment for another period of five years or any less period. But if the President of the Tribunal ceases to be a Judge of the Federal Court, he shall cease to be the President of the Tribunal. If he is unable to act as such temporarily for any reason, the Governor-General is authorised to appoint another Judge of the Federal Court to act for the time being in his place, after due consultation of the Chief Justice of India. The President may with the approval of the Governor-General given in his discretion make rules regulating the practice and procedure of the Tribunal, and also the fees to be taken in the proceedings before it.

The power  
of making  
rules

Jurisdiction  
of the  
Tribunal

The power to  
issue orders

Appeal to the  
Federal  
Court

Exclusive  
Jurisdiction

The Railway Tribunal shall exercise the jurisdiction as is conferred upon it by this Act. It may make for that purpose the necessary orders including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and costs, and orders for the production of documents, and the attendance of witnesses. These orders must be obeyed by the Authority and every Federated State, and every other person or authority affected by those orders. An appeal can be taken to the Federal Court against the decision of the Railway Tribunal on a question of law, but the decision of the Federal Court on such an appeal is final. The Railway Tribunal or the Federal Court can, on an application made to them for the purpose, change or revoke any order previously made by them. Subject to the power of hearing appeals by the Federal Court against the decisions of the Railway Tribunal, as described above, the jurisdiction of the Railway Tribunal is exclusive. The members of the Railway Tribunal, other than the President, shall receive such remuneration as may be determined by the Governor-General in his discretion. This, as

well as other administrative expenses of the Tribunal, shall be paid and charged on the Federal revenues, of which any fees, etc., taken by the Tribunal shall form part. The Governor-General is to exercise his individual judgment regarding the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimate of expenditure to be laid before the Federal Legislature.\*

### Construction and Reconstruction of the Railways.—

The Governor-General, exercising his discretion, shall make rules requiring the Authority and any Federated State to give notice in the cases prescribed by the rules, of any proposal for constructing a Railway, or for altering the alignment or gauge of a Railway, and for depositing plans. These rules are also to contain provisions enabling the Authority or a Federated State to lodge objections on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal Railway or a State Railway, as the case may be. If such an objection is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the particular proposal should be put into practice as it is or as modified with the approval of the Tribunal. The original proposal shall not be acted upon except in accordance with the decision of the Tribunal. This provision, however, does not apply to any case where the Governor-General in his discretion certifies that for reasons of defence such proposal should or should not be put into force.†

**Arbitration under Contracts.**—In respect of any Railway Company operating a Railway in British India before April 1st, 1937, it is provided that if a dispute arises under a contract between such a Railway Company and the Authority or the Federal Government, and the dispute is of such a nature that under the contract the Company could, but for this Act, submit to arbitration, the dispute shall be deemed to have arisen between the Company and the Secretary of State, who shall be substituted in respect of the contract for the Secretary of State in Council. Any award made in such an arbitration or any settlement of the dispute which is agreed to by the Secretary of State, with the concurrence of his

Remuneration of the Members and the President

Administrative expenses of the Tribunal

Rules in respect of constructing or re-constructing a Railway

Provisions for lodging objections

Reference to the Railway Tribunal

Provision for the needs of defence

Disputes between a Railway Company and the Authority or the Federal Government

\* Sec. 196. † Sec. 195.



Charged on  
Federal  
revenues

Advisers, is binding on the Federal Government and the Authority. Any such sum for which the Secretary of State may become liable for payment and any costs incurred by him in connection with this particular matter are to be paid from, and charged on, the Federal revenues. Such sums, however, shall be considered a debt due to the Federation from the Authority.\*

Functions  
may be  
entrusted  
to the  
Authority

**Railways in Non-Federating States.**—The Authority shall undertake the performance of those functions, which may be entrusted to it in relation to Railways in any Indian State, which has not acceded to the Federation, by His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States.†

Appoint-  
ments to be  
made by the  
Governor-  
General

**Official Directors of Indian Railway Companies.**—The powers of the Secretary of State in Council regarding the appointment of Directors and Deputy-Directors of Indian Railway Companies shall be exercised by the Governor-General acting in his discretion after consultation with the Authority.‡

**Establishment of the Authority.**—It is provided in the Transitional Provisions that the Federal Railway Authority can be established even before the establishment of the Federation.

Effect of the  
Proposals

**General Remarks.**—The effect of these provisions is that an independent Railway Authority will take the place of the present Railway Board. It will control the railway executive and the general working of the Railways in the country subject to the control of the Federal Government as regards policy. The Railway Budget will not be submitted to the Federal Legislature but shall be audited by the Auditor General of India.

The Railway Authority is being established for the first time in India. It is said that its institution is necessitated by the need to protect the management of the Railways from undue political influence and pressure.

Reasons for  
the establish-  
ment of the  
Authority

"The greatest danger to the system consists in the manipulation of its enormous resources of men and material by a political party intent on introducing the spoils system and making it an instrument of party policies."

\* Sec. 197. † Sec. 198 ‡ Sec. 199.



Moreover, Railways, being public utility concerns run by the taxpayers' money, must be run strictly on economic lines and business principles. Lastly the vast foreign capital invested in the Indian Railways must be protected so as to assure the foreign bondholders as to the safety of their investment. The experience of other British Dominions, notably Canada, Australia, and the Union of South Africa, also points to the same direction.

In India, however, the proposal for the establishment of the Railway Authority has not been well received. Probably there is no opposition to it in principle, as the Indian Legislative Assembly carried a motion in February, 1934, to the effect that the Constitution Act should merely contain a clause requiring the establishment of a Statutory Railway Authority, and that its constitution, functions and powers shall be subject to legislation, initial as well as amending, by the Indian Central Legislature. This has not been accepted as the complete constitution of the Authority is given in the Act. And objection is certainly taken to the various provisions by which the control of the Federal Ministers is almost completely eliminated, while no provision has been made for economy and retrenchment in the Railway administration, and for rationalization and nationalization, of the Railway.

Not well-  
received in  
India

Elimination  
of the control  
of the  
Federal  
Ministers

The whole scheme of the Federal Railway Authority, as it stands, seems to create the impression that it is meant to safeguard the huge foreign investment in the capital outlay of the Railways and the vested rights of the Europeans and the Anglo-Indians to favoured treatment in respect of Railway services and other rights regarding railway traffic, etc. It will have the effect of keeping the great national enterprise of the Railways with its economic, financial and strategic importance beyond the control of the popular Ministers. Lastly in as much as—

"it is obviously a creation of distrust of the democratic principle in government, or of the Indian politician come into power, its object as well as nature must meet with the strongest criticism."\*

Distrust of  
the democra-  
tic principle

Much, however, will depend upon how it is constituted and how it actually works.

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\* Shah, K. T. : Federal Structure, p. 500.

## CHAPTER XIV

### THE FEDERAL JUDICIARY

Need for a Federal Court ; the Federal Court of India ; the Judges of the Federal Court ; Functions of the Federal Court ; Form of Judgment on Appeal ; Enforcement of Decrees and Orders of Federal Court and Orders as to Discovery, etc. Law declared by the Federal Court and the Privy Council ; Power to make Rules ; Expenses of the Federal Court ; The High Courts in the States ; Appeals to His Majesty in Council ; the Working of the Court.

**Need for a Federal Court.**—A Federal Constitution cannot function well in the absence of an independent and impartial Federal Judiciary. Such a Constitution postulates a sort of mutual agreement between the Centre and the federating units regarding the distribution powers. This gives rise to differences of opinion regarding the interpretation of the agreement embodied in the Constitution and to disputes regarding the exercise of their respective rights by the units and the Federal Centre. These can only be decided by an independent judicial tribunal beyond the influence of the highest executive authority in the country, which may itself be a party to a dispute. Sir Shafaat Ahmad Khan observes:

Functions of  
the Federal  
Court

"A Federal Court is needed not merely to maintain the delicate poise of the Constitution. It is intended to guard it against encroachments on the liberty of the individual and rights of citizens by the Executive no less than by the Legislature. It will be an effective check on the tendency of the Federal Executive to usurp the function of other organs of the Federal Government."\*

This is amply borne out by experience, particularly by the work and achievement of the Supreme Court of the United States of America. All this was realized by the J. P. C., which wrote in its Report :

Interpreter  
and Guardian  
of the  
Constitution

"A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation."

Establish-  
ment and  
constitution  
of the Fed-  
eral Court

**The Federal Court of India.**—Provision is made in the Act for a Federal Court, consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary. It is, however,

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\* "The Indian Federation" page 230.

laid down that until and unless an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty requesting for an increase in the number of Judges, the number of puisne Judges can not be more than six.\*

Judges of the Federal Court can be appointed<sup>1</sup> by His Majesty by warrant under the Royal Sign Manual. They hold office till they are sixty-five, though they may resign their office earlier. They can be removed from office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour, or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report to that effect. Thus it is clear that the powers of the appointment and removal of the Judges are vested with the Crown, which in actual practice will mean the Secretary of State for India—an outside authority responsible to the British Parliament. The Judges, moreover, hold office during *good behaviour* and not during *the pleasure* of the Executive. This is certainly a welcome change and along with the above-mentioned provisions is likely to foster a sense of independence in the Judges which is absolutely essential if the Court is to command confidence. Objection has, however, been taken to the appointment of the Judges by an outside authority.

Appointment  
of the Judges

Tenure

Independence of the  
Judges

"The appointment of the highest judicial officers in the hands of the British King,—i.e., in the hands of the Secretary of State, and, through him, of the alien Indian Bureaucracy,—is in itself an objectionable feature of the Constitution. So long as the Judges owe their allegiance, primarily and obviously, to an outside authority unconsciously biased in favour of the existing order, they cannot but—quite unconsciously, perhaps—lean in favour with the class or the power that gives them their place, and their importance in the scheme of life . . . . Hence the supposed attribute of impartiality induced or encouraged by this method of appointing Judges to the highest tribunal in India would fail to accomplish the object in view; while there is at least an equal danger of its promoting something quite the reverse."<sup>†</sup>

Appointment  
and Removal  
by Outside  
Authority

As far as the removal of the Judges is concerned, it is also suggested that such a power ought to have been left to the local authorities—the Governor-General and the Governors in their respective spheres, on an address by the Legislatures as is the case in Britain. This would have equally well kept the Judges out of party politics.

\* Sec. 200. † K. T. Shah : Federal Structure, p. 389.

Maximum  
Strength

Minimum  
Working  
Strength

Qualifica-  
tions for  
appointment  
as Judges  
of the  
Federal  
Court

Additional  
Qualifica-  
tions for  
the Chief  
Justice

J. P. C.'s  
views

**The Judges of the Federal Court.**—The maximum number of Judges for the Federal Court, as has been stated above, can be six puisne Judges in addition to the Chief Justice of India.\* But the rules for practice and procedure of the Court are to provide that the minimum number of Judges who are to sit for any purpose is three.† Thus the actual number of Judges of the Federal Court, that has been constituted, is three, including the Chief Justice.

Qualifications for a Judge of the Federal Court, as provided in the Act,‡ include holding for at least five years of the office of a Judge of a High Court in British India or in a Federated State, or being a barrister of England or Northern Ireland of at least *ten years* standing, or a member of the Faculty of Advocates in Scotland of at least *ten years* standing, or being for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession. In the case of the Chief Justice of India, it is provided in addition that he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader and instead of at least ten years standing, his standing as a barrister or a pleader under the above-mentioned conditions should be of at least fifteen years. In computing this standing, both in the case of a Judge of the Federal Court and the Chief Justice, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, is to be included. The Judges, before they enter upon the duties of their office, are to make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out for the purpose in the Fourth Schedule to the Act. Regarding the qualifications of the Judges, the J. P. C. observed :

" We concur generally with the qualifications proposed for the Judges, but we doubt whether in principle any distinction ought to be drawn in the Constitution Act between judges, advocates and pleaders of State Courts and those of the High Courts, though this does not of course mean that any obligation would be imposed upon the Crown to appoint a Judge who had not all the necessary professional qualifications. We assume that the White Paper proposals mean throughout by " State Court," the Court of highest jurisdiction in the State."§

\* Sec. 300. † Sec. 214 (2). ‡ Sec. 200 (3), § Para 323.

It will be noticed that only professional lawyers can be directly appointed Judges of the Federal Court, though there is no bar against a civilian Judge of a Provincial High Court being appointed a Judge of the Federal Court provided he is otherwise qualified for that office.

The Judges of the Federal Court are entitled to such salaries and allowances for expenses regarding equipment and travelling upon appointment, and to such rights regarding leave and pensions, as may from time to time be fixed by His Majesty in Council, but the salary or rights in respect of leave of absence or pension of a Judge cannot be varied to his disadvantage after his appointment.\* By the relevant Order in Council issued on the 18th day of December, 1936, it was provided for the functioning of the Federal Court from 1st October, 1937. Under the authority of this Order in Council,† the Judges in respect of time spent on actual service receive Rs. 5,500 per month as salary while the Chief Justice receives Rs. 7,000 per month as salary. Regarding pension, it is provided that there shall be payable to the Chief Justice on his retirement on attaining the age of sixty-five, or on his retirement at an earlier date, either after completing not less than twelve years' actual service, or on grounds approved by the Secretary of State, a pension at the rate of seventy-five pounds per annum in respect of each period of six months' service for pension provided that if his total service for pension is less than six months, or is six months or more but less than twelve months, he shall be deemed for the purposes of this paragraph to have in the first case six, and in the second case twelve months' service for pension. The pension, however, cannot exceed two thousand pounds per annum in any case. If the Chief Justice dies within one year from the date of his retirement, his legal personal representative shall receive by way of gratuity the sum, if any, by which the aggregate of any amounts paid or due to him whether from the revenues of the Federation or from the Exchequer in respect of pension (including any gratuity payable on retirement) falls short of three thousand pounds.

Provision is made for the temporary appointment of the Acting Chief Justice. One of the other Judges of the Court, selected by the Governor-General in his

The salaries of the Judges of the Federal Court

Rules in respect of pension

\* Sec. 201.

† The Government of India (Federal Court) Order, 4, 5, 6.

Temporary  
appointment  
of Acting  
Chief  
Justice

discretion for the purpose, will perform the duties of the office of the Chief Justice, if that office becomes vacant or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, until some person appointed by His Majesty assumes charge of the office.\* No provision, however, is made in the Act for temporary appointment of other Judges.

Seat of the  
Court

The Federal Court is a court of record and sits in Delhi,—the capital of India, but it can sit at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.†

**Functions of the Federal Court.**—The Federal Court must function as the guardian and interpreter of the Constitution. It must decide disputes among the units, and between the units and the Federal Centre. It may be vested with the powers of a Supreme Court of Appeal for the whole country. Lastly, it can act in an advisory capacity as far as the interpretation of the Constitution Act is concerned. The Federal Court of India has been vested with some of these powers and will discharge some of these functions. For this purpose it is vested with both Original and Appellate jurisdiction. The Governor-General can also consult the Court on any point he likes. The Court may function as the Supreme Court for British India only if its jurisdiction is enlarged in that direction by an Act of the Federal Legislature.

The Original  
Jurisdiction  
of the  
Federal  
Court

Its original jurisdiction,‡ to the exclusion of any other court, extends to disputes between the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. This means that the jurisdiction is not confined to constitutional questions only, but also extends to disputes involving legal rights. It is not identical with a mere authoritative interpretation of the Constitution as the Supreme Court does in the United States, or as the Privy Council does for any British Dominion or Colony. The Federal Court in the exercise of its original jurisdiction can pronounce only a declaratory judgment. In the case of a dispute where a State is a party, the original jurisdiction of the Court does

Constitutional  
Questions  
and Dispute  
involving  
legal right

Jurisdiction  
in respect of  
Indian  
States

\* Sec. 202. † Sec. 203. ‡ Sec. 204.

not extend unless the dispute concerns the interpretation of this Act or of an Order in Council, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State—or a dispute arising under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State—or a dispute arising under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between the State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute—or a dispute arising under an agreement which expressly provides that the said jurisdiction shall not extend to such a dispute. This difference between the original jurisdiction of the Court regarding British Indian Provinces and the Federated States is due to the difference in their status and the conditions on which the States may accede to the Federation.

The J.P.C. observed: "This jurisdiction is to be an exclusive one, and in our opinion rightly so since it would be altogether inappropriate if proceeding could be taken by one Unit of the Federation against another in the Court of either of them. For that reason we think that, where the parties are Units of the Federation or the Federation itself, the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of federal laws, by which we mean any laws enacted by the Federal Legislature."\*

J.P.C.'s.  
Observation

The appellate jurisdiction of the Federal Court extends to the hearing of appeals against any judgment, decree or final order of a High Court in *British India*, if the High Court involved gives a certificate to the effect that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder. When such a certificate is given, any party to the case may take an appeal to the Federal Court on the ground that the question involved has been wrongly

Appellate  
Jurisdiction  
of the  
Federal  
Court

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\* Para 324.



No Appeal to  
His Majesty  
in Council

decided, or any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given by the High Court, and on any other ground with the leave of the Federal Court. In these cases no direct appeal lies to His Majesty in Council either with or without special leave.

The Supreme  
Court of  
Appeal for  
India

These provisions give a fairly wide margin of appeal to the Federal Court, though appeals against the decisions of the High Courts, can be entertained only under certain conditions. A strong body of opinion in British India has always advocated a Supreme Court of Appeal for India. It was, therefore, urged on behalf of this section that the Federal Court should be vested with further jurisdiction, and the Court should sit in two divisions, one dealing with Federal matters and the other with appeals against the decisions of the High Courts. The proposal was opposed by the representatives of the States as well as by some British Indian delegates. "Sir Nripendra Sircar stated that the cost of such a Court would be prohibitive, for any right of appeal to the Supreme Court, even in the limited criminal field of capital cases, would be largely availed of, and some twenty to twenty-five judges would be necessary to deal with the work." He also pointed out that by this method it was not possible to escape eventually from the jurisdiction of the Privy Council as it was a prerogative court. The White Paper proposed to provide for the Supreme Court of Appeal for British India in civil cases and in criminal cases involving capital sentences, provided there was no appeal to the Federal Court, by an Act of the Federal Legislature, introduced with the previous sanction of the Governor-General given at his discretion. Regarding this proposal the J.P.C. observed :

The Proposal  
of the White  
Paper

J. P. C.'s  
Recommendations

The Court would in effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Supreme Court or by special leave of His Majesty. We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of and in no sense subordinate to, the Federal Court ; but it would be impossible to avoid a certain overlapping of jurisdiction, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes, and we are satisfied that the existence of two such courts of co-ordinate jurisdiction would be to the advantage neither of the



Courts themselves nor of the Federation. There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal court, and we think that the Legislature should be empowered to confer this extended jurisdiction on it."\*

The Committee assumed that after this is done,

"the Court would sit in two Chambers, the first dealing with federal cases, and the second with British India appeals. The two Chambers would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable."\*

At the same time the Committee did not think proper to recommend a Court of Criminal Appeal for India, as it thought that the rights of a condemned man seemed to be very fully safeguarded, and that no good purpose would be served by adding yet another Court to which appeals could be brought.†

No Supreme Court of Criminal Appeal for India

Thus it is provided‡ in the Act that the Federal Legislature may provide by an Act of its own that in such civil cases as may be specified in the Act, an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any certificate as mentioned above. There shall, however, be no appeal under this Act unless the amount involved in dispute is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act—or that the judgment, decree or final order involves property of the same amount or value—or the Federal Court gives special leave to appeal. If such an Act is passed by the Federal Legislature, direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave, may also be abolished wholly or partially by an Act of the same Legislature. But a Bill or amendment for any of these purposes cannot be moved in the Legislature without the previous sanction of the Governor-General in his discretion.

Power of the Federal Legislature to enlarge appellate jurisdiction of the Federal Court

Regarding appeals against the decisions of a High Court in a Federated State, it is provided§ that appeals in such cases are permissible when it is alleged that a question of law concerning the interpretation of this Act or of an Order in Council has been wrongly

Appellate Jurisdiction of Federal Court in appeals from High Courts in Federated States

\* Para 329. † Para 330. ‡ Sec. 206. § Sec. 207.

Letters of  
Request to  
the Federa-  
ted States

Power of  
the Governor-  
General to  
consult the  
Federal  
Court

decided, or on the ground of the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or concerning an agreement made in relation to the administration in that State of a law of the Federal Legislature. Appeal in such cases is to be by way of special case to be stated for the opinion of the Federal Court by the High Court. The Federal Court may require the High Court in the Federated State to state a case and may return a case so stated in order that further facts may be stated. When the Federal Court requires this to be done, or orders a stay of execution, or requires the aid of the civil or judicial authorities in a Federated State, it shall cause letters of request for the purpose to be sent to the Ruler of the State who shall communicate it to the High Court or to the required judicial or civil authority.\*

In addition to the exercise of its original and the appellate jurisdiction, the Federal Court is expected to function in an advisory capacity for the interpretation of the Constitution. When the Governor-General thinks that a question of law has arisen or is likely to arise of a nature and importance that it is expedient to secure the opinion of the Federal Court on it, he may refer it in his discretion to the Court for consideration and report to the Governor-General. Such a report shall be made in the open Court only in accordance with the opinion of the majority of the Judges present at the hearing of the case, but a dissenting Judge can deliver a separate opinion.†

This power possessed by the Federal Court is analogous to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833. It is an important provision as it will enable the Governor-General and through him others to seek the opinion of the Federal Court regarding the legality or otherwise of certain questions that may rise. The decisions of the Court may have the effect of 'relegating exceedingly delicate and inflammable issues, which may sweep, like prairie fire over the torrid plains of India, to the dry atmosphere of judicial calm,' though the Governor-General or for the matter of that any other executive authority cannot be allowed to shift

his responsibility to the Federal Court. Moreover if the legality of a particular question is tested before giving effect to it, many a pitfall can be avoided, and huge waste of energy, time and money involved in passing a law which is declared *ultra vires* of the Constitution subsequently, is saved. It should, however, be noticed that it is only the Governor-General who can make a reference to the Court for the purpose. No other person or authority can do so, which means that the Provinces cannot on their own account refer questions for report to the Federal Court. But probably the Provinces can refer a particular question to the Governor-General for securing the opinion of the Federal Court and he may, at his discretion, do so. Lastly, the Federal Court can only *report* its opinion. This *report* is to be distinguished from the *judgment* which must be binding on all concerned. Nothing is said in the Act whether this *report* is binding on the Governor-General. Again it is very difficult to answer the question whether such an expression of opinion on a particular question precludes the Federal Court from reversing its own opinion when a specific case involving the same question is brought before it and some material is placed before the Court for consideration.

Only the Governor-General has this Power

Is the Report binding?

The Act empowers\* the Federal Legislature to make provision by an Act of its own to confer on the Federal Court supplemental powers, which are not inconsistent with the provisions of the Act, which may be necessary to enable the Federal Court to exercise its jurisdiction more effectively. Under this provision the Central Legislative Assembly has passed an Act empowering the Federal Court to make rules for regulating the service of processes issued by the Court, including rules requiring a High Court from which an appeal has been preferred to the Federal Court, to serve any process issued by the latter in connection with that appeal. On the other hand the Federal Legislature has no power to confer any right of appeal to the Federal Court against the decision of a High Court in British India in a case where the latter is exercising jurisdiction on appeal from a Court outside British India, and to affect any right of appeal in such cases to His Majesty in Council with or without appeal.†

Ancillary Powers of the Federal Court

\* Sec. 215. † Sec. 218.

Orders to be  
given effect

**Form of Judgment on Appeal.**—The case where the appeal has been allowed by the Federal Court shall be remitted by it to the Court against whose decision the appeal was made with its orders, decree or judgment, and the latter shall give effect to it. The orders regarding costs of a case in the Federal Court and regarding a stay of execution in a case under appeal to the Federal Court pending the hearing of the appeal, shall be transmitted to the court against whose decision the appeal has been made, and shall be given effect by the latter.\*

Civil and  
Judicial  
authorities  
to act in aid  
of the Federal Court

**Enforcement of Decrees and Orders of Federal Court and Orders as to Discovery, etc.**—The authority of the Federal Court has been given legal backing by the provision that all authorities, civil and judicial, throughout the Federation must act† in aid of the Federal Court. The latter has power regarding the area covered by the Federation to pass orders securing the attendance of persons, the discovery or production of documents, or the investigation or punishment of any contempt of court. These and other connected orders must be enforced by all courts and authorities in every part of British India or of any Federated State as the orders of the highest Court having jurisdiction over them.† These powers, however, do not apply to the Federated States in respect of the cases arising under the additional appellate jurisdiction if it is conferred on the Federal Court under the provisions of the Act. The authority of the Federal Court regarding the Federated States cannot be exercised directly, but will be exercised through "Letters of Request" to the Rulers of the States as has been described above.

Binding on  
all Courts

**Law declared by the Federal Court and the Privy Council.**—The law declared by the Federal Court and by any judgment of the Privy Council is binding on all courts in British India, and in any Federated State if it concerns the application and interpretation of this Act or an Order in Council or any matter in respect of which the Federal Legislature has power to make laws.‡

**Power to make Rules.**—The Act empowers|| the Federal Court to make rules from time to time with the approval of the Governor-General in his discretion for regulating the practice and procedure of the

\* Sec. 209. † Sec. 210. ‡ Sec. 212. || Sec. 214.

Court, including rules in respect of persons practising before the Court, the time for the admission of appeals, costs and fees, and for the summary trial of appeals which may appear to the Court to be frivolous or vexatious or brought for the purpose of delay. Rules thus made may also fix the number of Judges competent to sit for any purpose, but no case can be decided by less than three Judges. If the appellate jurisdiction of the Federal Court is enlarged by the Federal Legislature as mentioned above, the rules made must provide for the constitution of a special division of the Court for hearing cases which would have been within the jurisdiction of the Court even if the jurisdiction had not been enlarged. Subject to the rules of the Court, the Chief Justice of India is empowered to decide what Judges are to constitute any division of the court and what Judges are to sit for any purpose. Judgments of the Court must be delivered in the open Court with the concurrence of a majority of the Judges present at the hearing of the case, but a Judge who differs with the opinion of the majority may deliver a dissenting judgment. All proceedings in the Federal Court must be carried on in the English language.

Judgment of  
the Court

**Expenses of the Federal Court.**—The administrative expenses of the Federal Court, including all salaries, allowances and pensions of the officers and the servants of the Court shall be charged on the revenues of the Federation. The income of the Court made up of any fees or other moneys taken by the Court shall form part of the revenues of the Federation. The Governor-General is to exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Federal Legislature.\*

Charge on  
Federal  
Revenues

**The High Courts in the States.**—A High Court in a Federated State, as referred to here, will mean any Court declared to be a High Court by His Majesty after communication with the Ruler of the State.†

Meaning

**Appeals to His Majesty in Council.**—In spite of this extensive original and appellate jurisdiction and important advisory functions, the Federal Court of India is not the highest Court of Appeal for British India and the Federated States. Appeals can still be

\* Sec. 216. † Sec. 217.

Appeals  
without  
leave of the  
Federal  
Court

taken to His Majesty in Council, which in actual practice means the Judicial Committee of the Privy Council. Under the provisions of the Act\* an appeal may be brought to His Majesty in Council from a decision of the Federal Court *without leave* in respect of a dispute concerning the interpretation of the Act or an Order in Council, or the Instrument of Accession of any State, or the agreement regarding the administration in any State of a law of the Federal Legislature. Appeals in other cases may be taken to His Majesty in Council *by leave* of the Federal Court or of His Majesty in Council.\*

Federal  
Court not  
the highest  
Court of  
Appeal

Thus it is clear that the Federal Court is not the Highest Court of Appeal as far as the Federation of India is concerned. "It is not the final appellate authority—the last authoritative judicial interpreter of the Constitution, or the ultimate declarer of the civil law of the land." The position in the words of Professor K. T. Shah seems to be that—

Position  
Summed up

"the law declared by the Privy Council,—and, in cases, unappealed against, by the Federal Court, is the final exposition of the constitutional law of India, as also of the ordinary law in so far as British India is concerned. As such, it is binding, until amended by the appropriate Legislatures, on all Courts in British India, and, as regards constitutional matters, in all Federated States."†

But one thing is not clear whether the advisory opinion expressed by the Federal Court can be taken to be a decision of the Federal Court for the purpose of appealing against to the Privy Council.

**The Working of the Court.**—The Federal Court of India has been established with three Judges. The Chief Justice, Sir Maurice Gwyer, K.C., is a Britisher, and two puisne Judges, Sir Shah Muhammad Sulaiman and Mr. S. Varadachari, are Indians. It has its seat at Delhi. Some prominent lawyers have already enrolled themselves as practitioners before the Court. A dispute which arose between the Government of the Central Provinces and Berar and the Government of India, regarding the power to levy tax on the sale of petrol and lubricants was referred to it for decision by the mutual consent of the parties. After hearing both the sides, the Federal Court decided in favour of the Provincial Government holding the new tax to be within the sphere of the Province. The Government of the United Provinces filed another suit before the Court in which it claimed that the fines

\* Sec. 208. † The Federal Structure, p 398.

imposed and collected in the cantonment areas should be credited to the Provincial revenues with retrospective effect since 1924. The suit was dismissed by the Court, but it seems that the Provincial Governments can claim these fees and fines after April 1, 1939. Many more suits involving the interpretation of the constitution are likely to be referred to the Court for decision in the near future.

High hopes are pinned to the Federal Court. It is expected to serve as the bulwark of civil freedom and national solidarity—linking in one bond of unity the various units of the Federation, the Federated States and the British Indian Provinces, by bringing them under one uniform judicial system. It must stand forth as the guardian of the Constitution and the custodian of the majesty of law and the rights of all—of the Federal Centre, the Units, and the individual citizens. The task before it is by no means easy.

High hopes

"If it either becomes a citadel of social obscurantism, prohibiting progressive legislation on the ground of guarantees to minorities, or of a defiant spirit of advance, justifying every legislative action however fundamentally it may go against the religious and cultural interests of communities, it will fail to cement the constituent states of the Federation. If it becomes a champion of Central Authority and allows the Federal Legislature and Executive to override, on various pretences, the guaranteed rights of the States or on the other hand if it tries to uphold and extend the jurisdiction and sovereignty of the States at the expense of the necessary powers of the Central Government, it will mar the prospects of a free, progressive, and united India. Only if it follows a steady middle course, and establishes, within a short time, a prestige and an ascendancy which neither the Central Government nor the States, neither the majority nor the minority would dare to question, then and only then can India be assured of a safe voyage through the strong seas of constitutional Federation."\*

Real Function of the Federal Court

It is hoped that the Court will establish a healthy tradition of harmonious combination of both classes of units of the Federation—the British Indian Provinces and the Indian States, with the ultimate aim of establishing the reign of law throughout the length and breadth of this great land. The short experience of the working of the Federal Court augurs well for the future.

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\* Panikkar : Federal India.



## CHAPTER XV THE PROVINCIAL JUDICIARY

### The High Courts

The High Courts for British India ; Constitution of the High Courts ; the Judges of the High Courts ; Jurisdiction of the High Courts ; Relationship of the High Courts to the Provincial Governments ; Independence of the High Courts ; the Subordinate Judiciary.

**The High Courts for British India.**—The Government of India Act, 1935, recognizes\* the following courts as High Courts in British India :

High Court  
under the  
Act

The High Courts of Calcutta, Madras, Bombay, Allahabad, Lahore and Patna ; the Chief Court in Oudh ; the Judicial Commissioners' Courts in the Central Provinces and Berar, in the North-West Frontier Province, and in Sind ; any other court in British India constituted or reconstituted as a High Court under the provisions of the Act ; and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act.\*

The High  
Court of the  
Central pro-  
vinces and  
Berar

It is also provided that if before the introduction of Provincial Autonomy, provision is made for the replacement of any court or courts mentioned above by a High Court, the new Court is also to be recognized as the courts mentioned above. It was pointed out in the Parliament that this provision is introduced to meet the possibility of converting the Judicial Commissioner's Court in the Central Provinces and Berar into a High Court. Since then this has been done by an Order in Council made in February, 1936. The new High Court of the Central Provinces and Berar, is automatically recognized as a High Court under the above provisions.\*

Provision† is also made for the constitution or reconstitution of High Courts by letters patent. If the Provincial Legislature presents an address for the purpose to the Governor for submission to His Majesty, the latter may by letters patent constitute a High Court or reconstitute the High Court for that Province or its

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\* Sec. 219. † Sec. 229.



part, or amalgamate the two High Courts if they exist in that Province. If this is done, the letters patent are to provide for the continuance in their respective offices of the existing Judges, officers and servants of the Court or Courts, and also for the carrying on before the new Court or Courts of all pending matters.

Constitution  
of a new  
High Court

**Constitution of the High Courts.**—Every High Court in British India is a court of record.\* It consists of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint. This is, however, subject to the provision that the Judges appointed by His Majesty along with the additional Judges appointed by the Governor-General under the provisions of this Act must not exceed the maximum number fixed in relation to that particular Court by His Majesty in Council. According to "the Government of India (High Court Judges' Order, 1937" the maximum strength *excluding* the Chief Justice, the Chief Judge or the Judicial Commissioner but *including* any additional Judges or additional Assistant Judicial Commissioners to be appointed by the Governor-General, of the various High Courts is as under:

Maximum  
strength of  
the various  
High Courts

The High Court at Madras	... 15 Judges
The High Court at Bombay	... 15 Judges
The High Court at Calcutta	... 19 Judges
The High Court at Allahabad	... 12 Judges
The High Court at Lahore	... 15 Judges
The High Court at Patna	... 11 Judges
The High Court at Nagpur	... 7 Judges
The Chief Court at Oudh	... 5 Judges
The Court of the Judicial Commissioner of Sind—	
5 Assistant Judicial Commissioners.	
The Court of the Judicial Commissioner	
of the North-West-Frontier Province—	
2 Assistant Judicial Commissioners.	

**The Judges of the High Courts.**—Every High Court Judge is appointed† by His Majesty by warrant under the Royal Sign Manual, though temporary and additional Judges can be appointed by the Governor-General in his discretion.‡ It is provided that in case the office of the Chief Justice of a High Court falls vacant, or a Chief Justice is unable to perform his duties by reason of his absence or for any other reason, the Governor-General may in his discretion

Appoint-  
ment

\* Sec. 220. † Sec. 220 (2). ‡ Sec. 222.

Temporary  
and Addi-  
tional Ap-  
pointments

appoint one of the other Judges of the Court to perform the duties of the said Chief Justice till the person appointed by His Majesty enters on the duties of his office, or the original Chief Justice resumes his duties. In case of a vacancy in the office of any other Judge of a High Court for any reason, the Governor-General is empowered to appoint in his discretion, a person duly qualified for appointment as a Judge to act in the vacancy until some permanent appointment is made by His Majesty or the permanent Judge resumes charge. The Governor-General can also appoint duly qualified persons as additional Judges of a High Court for the maximum period of two years, if he thinks that such an increase is necessary on account of any temporary increase in the business of the High Court or the arrears of work. These appointments, however, are subject to the provisions regarding the maximum strength of the High Courts mentioned above

Retirement  
and Tenure

The High Court Judges hold office till they are sixty years\* of age though they can resign their office earlier by addressing their resignation to the Governor of the Province, wherein is situated the seat of the Court to which they belong. They can also be removed from office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council so reports on being consulted by His Majesty. Thus the High Court Judges hold office during *good behaviour* and not *during pleasure* as was the case before. Regarding the age-limit, the J. P. C. observed :

J. P. C's.  
Observation

" It has been represented to us that the retiring age of Judges should not be raised to sixty two, but should continue to be sixty ; and we concur. We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have showed themselves qualified for promotion to the Federal Court ; but the evidence satisfies us that in India a Judge has in general done his best work by the time he has reached the age of sixty."†

Thus the *status quo* has been maintained on this point, but there is one difference that while under the previous law the age-limit of sixty was not statutory, being enforced by taking an undertaking from the Judges at the time of their appointment to retire at that age, it is so under the new Act and the Judges of the High Courts must retire at the age of sixty.

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\* Sec. 220. (2). † Para. 331.

A person, in order to be eligible for appointment as a Judge of a High Court, must be a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of the same standing—or must be a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as or exercised the powers of a District Judge—or has for at least five years held a judicial office in British India not inferior to that of a Subordinate Judge or Judge of the Small Cause Court—or has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession. A person is not eligible for appointment as the Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a Judge of a High Court, unless he is or at the time of his appointment to judicial office was, a barrister, or a member of the Faculty of Advocates, or a pleader. In computing the standing of a person as required above, any period during which the person has held judicial office after his becoming a barrister, an advocate, or a pleader is to be included.\*

Qualifications of High Court Judges

It will be noticed that the statutory requirement that not less than one-third of the Judges of every High Court must have been called to English, Scottish, or Irish Bar, and that not less than one-third must be members of the Indian Civil Service is abolished. The observation of the J. P. C. on this point was :

Statutory requirement regarding Barristers, Judges and I. C. S. Judges abrogated

'We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law . . . †

On the other hand, I. C. S. Judges have been retained. Indian public opinion has often expressed itself against such appointments as I. C. S. Judges are likely to bring the outlook and view point of the executive to bear upon their functions as Judges. On the other hand it is suggested that the I. C. S. Judges possess great legal and practical training and the understanding of the conditions and the people of the country. The J. P. C. observed :

Civilian Judges

" . . . but we are clear (and we are informed that this is the general opinion of their colleagues) that the Indian Service Judges are an important and valuable element in the judiciary, and their

J. P. C.'s. views

\* Sec. 220 (3). † Para. 331.

presence adds greatly to the strength of the High Court. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which barristers and pleaders from the towns may not always possess, and we do not doubt that the Crown will continue to appoint them."\*

Thus these prize-posts for the I. C. S. are kept in tact though it is against Indian public opinion and is also against British practice.

The office of  
the Chief  
Justice

Under the Act of 1919, a Civilian Judge or a non-barrister Judge could not hold permanently the office of the Chief Justice. This bar has now been removed so that non-barristers as well as civilians can now hold that office. This throwing open of the office of the Chief Justice to non-legal element is objected to in India. Sir Tej Bahadur Sapru in his Memorandum submitted :†

Sir T. B  
Sapru'  
view

"The best traditions of the courts in India have been built up by Judges recruited from the profession, and their surroundings in England or by Judges who have been recruited from the ranks of the profession in India. I shall not be willing to accept any change in the law which would in any degree or measure affect the continuance of these traditions."

J. P. C's.  
views

The J. P. C., however, observed :

"The Indian Civil Service Judges are not at the present time eligible for permanent appointment as Chief Justice of a High Court, though we understand that this rule does not apply in the case of Chief Courts. We see no reason for this invidious distinction, and we think that His Majesty's freedom of choice should not be thus fettered."‡

Provision  
regarding  
the Judges  
before the  
enforcement  
of the Act

It is expressly provided§ in the Act that High Court Judges, functioning before the introduction of the Provincial Autonomy, are to continue in office and are to be regarded as if they have been appointed under the provisions of this Act subject to the provision that they are not required to relinquish their office at an earlier age than they would have been required if this Act had not been passed. Every High Court Judge is required to make and subscribe the prescribed oath before the Governor or some person appointed by him.||

Salaries and  
Allowances  
of the High  
Court  
Judges

The Judges of the High Courts are entitled to such salaries and allowances and rights in respect of leave and pensions as may from time to time be fixed by His Majesty in Council. The salary of a Judge and his rights in respect of leave and pension cannot

\* Para 331. † Para 331. ‡ Para 331. § Sec. 231 (1). || Sec. 220 (4)

be varied to his disadvantage after his appointment.\* The Government of India (High Court Judges) Order 1937, has fixed the salaries, allowances, etc., of the Judges of the various Indian High Courts. The salaries of the Judges are given below :—

	Rs. per annum
Chief Justice of the High Court at Calcutta ...	72,000
Chief Justice of the High Courts at Madras, Bombay, Allahabad Patna and Lahore ...	60,000
Chief Justice of the High Court at Nagpur ...	50,000
Judge of the High Courts at Calcutta, Madras, Bombay, Allahabad, Patna and Lahore; Chief Judge of the Chief Court of Oudh ...	48,000
Judge of the Chief Court of Oudh	
Judicial Commissioner of Sind ...	42,000
Judge of the High Court at Nagpur	40,000
Judicial Commissioner of the North-West Frontier Province ..	39,000
Assistant Judicial Commissioner of Sind or of the North-West Frontier Province ...	36,000

These salaries and allowances of the Judges, and the servants and officers of the High Courts, and other administrative expenses of the High Courts are charged upon the Provincial revenues of which the fees or other moneys taken by the Courts form part. The Provincial Governors are to exercise their individual judgment regarding the amount to be included in the Provincial budgets in respect of such administrative expenses of the High Courts.†

Salaries and Expenses charged on the Provincial revenues.

**Jurisdiction of the High Courts.**—The jurisdiction of the High Courts, the law administered in them, the respective powers of the Judges in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and its members sitting alone or in division courts, are the same under the new Act as they were before the introduction of its Provincial part ‡. This means that the present original and appellate jurisdiction of the High Courts of Calcutta,

Legal Jurisdiction

\* Sec. 221. † Sec. 228. ‡ Sec. 223.

Bombay and Madras, and the appellate jurisdiction of the other High Courts continue. This jurisdiction extends over all matters civil and criminal and matters connected with wills, bankruptcy, admiralty, and of divorce only in the cases of Christians, Parsis, and Hindus married under the Civil Marriage Act or Special Marriage Act.

Administra-  
tive Jurisdic-  
tion

The High Court have also been vested with certain administrative jurisdiction.\* This consists of superintendence over all courts in India subject to the appellate jurisdiction of a High Court. In respect of these courts the High Court is empowered to call for returns, make and issue general rules and prescribe forms for regulating their practice and proceedings, prescribe forms in which books, entries and accounts shall be kept by their officers, and settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts. Such rules, however, must be according to the provisions of the law in force, and require the previous approval of the Governor. The High Court, nevertheless, is not authorised† to question any judgment of any inferior court, *viz.*, a court subject to its appellate jurisdiction, which is not otherwise subject to appeal or revision. If an application‡ is made to the High Court by the Advocate-General for the Federation or by the Advocate-General of a Province for the purpose, and the High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it can transfer that case to itself for trial.

No original  
Jurisdiction  
in revenue  
matters

No High Court has any original jurisdiction in any matter concerning the revenue,§ or concerning any act ordered or done in connection with its collection according to the usage and practice of the country or the prevailing law until otherwise provided by the Act of the appropriate Legislature. But such a Bill or amendment cannot be moved in the Federal or the Provincial Legislature without the previous sanction of the Governor-General in his discretion and the Governor in his discretion, respectively.

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\* Sec. 224. † Sec. 224 (2). ‡ Sec. 225. § Sec. 226.

Special provision\* is made for Courts of Appeal in revenue matters. No member of the Federal or Provincial Legislature can become a member of any tribunal in British India having jurisdiction to hear appeals or revise decisions in revenue cases. Where before April 1, 1937, *viz.*, before the commencement of the Provincial Part of the Act, the power to entertain appeals or revise decisions in revenue cases was vested in the Provincial Government, the Governor is empowered to constitute a tribunal, consisting of person or persons as he may think fit in his individual judgment, to exercise similar jurisdiction, until other provision is made by the Legislature of the Province. The members of such a tribunal shall receive salaries and allowances to be determined by the Governor exercising his individual judgment. These salaries and allowances shall be charged on the Provincial revenues.

Courts of  
Appeal in  
revenue mat-  
ters

The jurisdiction of a Provincial High Court may be extended† to any area in British India not forming part of that Province by His Majesty in Council, if he is satisfied that an agreement in that behalf has been made between the Governments concerned. The power of any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province, under any law or letters patent in force before the introduction of the Provincial Autonomy under the provisions of this Act, is not touched by the provision mentioned above. Where a High Court possesses any extra-provincial jurisdiction, the Legislature of the Province in which the Court has its principle seat is not empowered to increase, restrict or abolish that jurisdiction, if it had not that power before the passing of this Act. On the other hand, the Act does not prevent the Legislature having such powers from exercising them.

Extra-pro-  
vincial  
Jurisdiction  
of High  
Courts

All proceedings in the High Courts must be in the English language.‡

The powers of the High Court are limited in certain ways. No proceedings lie in and no process can be issued from any court in India, including the High Courts, against the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in relation with the Indian States,

Certain  
Limitations

\* Sec. 296. † Sec. 230. ‡ Sec. 227.



the Provincial Governors, and the Secretary of State in a personal capacity or otherwise. No proceedings also lie with any court in India, except with the sanction of His Majesty in Council, against any person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in relation with the Indian States, a Provincial Governor, or the Secretary of State in respect of any act of omission or commission in performance or purported performance of the duties of their office.\*

Death  
Sentences

There is also a special provision regarding death sentences. Where any person has been sentenced to death in a Province, the Governor-General in his discretion has all powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council before the commencement of the Provincial Part of this Act. His Majesty's right, or if that right is delegated to the Governor-General by his Majesty, to grant pardons, reprieves, respites or remissions of punishment is kept in tact.

**Relationship of the High Courts to the Provincial Governments.**—Before the passing of this Act, the administrative machinery of the High Courts, except that of the Calcutta High Court, was subject to the control of the Provincial Governments and Legislatures. The Simon Commission proposed that this administrative control should be placed in the hands of the Central Government and their expenditure and the receipts from court fees should form part of the Central Government's Budget. The J. P. C. disagreed with this and recommended that all the High Courts, including the Calcutta High Court, should be brought into relationship with their respective Provincial Governments. It observed:

Provincial-  
ization of the  
High Courts

"But . . . . . the High Court is, in our view, essentially a provincial institution : indeed, as subsequent paragraphs show, we seek to secure for each High Court an administrative connection with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside body, regarded (as it would probably be) as an appanage of the Federal Government. Apart from these reasons' . . . . . we are satisfied that the financial adjustments which would be involved in any attempt to centralize the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed."†

\* Sec. 306. † Para. 333.



In pursuance of this, the administration of justice is put in the Provincial Legislative List. Item 1 in that List is made up of "Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organization of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention." Item 2 consists of "Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts."

On the other hand, the Federal Legislature has an exclusive power to make laws in respect of the jurisdiction, powers and authority of all courts in British India except the Federal Court, with respect to any of the matters in the Federal Legislative List.\* The Provincial Legislatures have also similar powers in respect of courts within their respective Provinces regarding subjects within their exclusive jurisdiction. And both the Federal and the Provincial Legislatures have concurrent powers in respect of matters on the Concurrent Legislative List. Thus from the point of view of relationship with the Legislatures in the country, the High Courts are neither completely federalized nor provincialized.

Regarding this the J. P. C. observed :

"It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of inferior status to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible ; but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law making power for the purposes which we have mentioned and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High Courts . . . "†

**Independence of the High Courts.**—The provincialization of the High Courts necessitates the safeguarding of the independence of the High Courts against undue political pressure from the Provincial Executive or the Provincial Legislature. It was admitted by the J. P. C. that the Provincial Legislatures had from time to time tended to assert

The High  
Courts  
*vis-a-vis* the  
Federal and  
the Pro-  
vincial  
Legislatures

J. P. C's  
Observation

Protection  
against  
political  
pressure

\* Item 53, † Para. 334.

Expenses  
not subject  
to the vote  
of the Legis-  
latures

Reservation  
of Bills deroga-  
tory to the  
powers of the  
High Courts

Position and  
Tenure of  
the Judges

Office during  
*good  
behaviour*

Conduct\* of  
a Judge  
cannot be  
discussed in  
the Legis-  
lature

their powers in a way which might under the new Constitution affect the efficiency of the Courts.\* The High Courts must be secured a position of independence and freedom from pressure for political purposes, if they are to command the confidence of the people and do discharge their functions properly. It is for this purpose that it is provided in the Act that the expenses of the High Courts should be charged on the Provincial revenues, which means that they can be discussed but not voted upon by the Provincial Legislatures. Moreover in accordance with the recommendation of the J. P. C., the Governor-General and the Governors have been instructed in their respective Instruments of Instruction to reserve for the signification of His Majesty's pleasure any Bill which in their opinion would so derogate from the powers of the High Courts as to endanger the position which those Courts are designed to fill under the Constitution Act.†

The position and the tenure of the Judges are also safeguarded in order to give them a feeling of security, which is absolutely essential for creating a sense of independence in them. The appointment and the removal of the Judges are in the hands of His Majesty beyond the control of political influences in the Provinces. The Judges hold office till the age of sixty *during good behaviour* and *not during pleasure*. Their salaries and allowances, and rights in respect of leave and pensions are fixed by His Majesty in Council. The salaries of the Judges and their rights in respect of leave or pension cannot be varied to their disadvantage after their appointment. The administrative expenses of the High Courts, including the salaries, allowances, etc., of the Judges are charged on the revenues of the Provinces and are not subject to the vote of the Provincial Legislatures. Lastly no discussion can take place in a Provincial Legislature with respect to the conduct of any Judge of the Federal Court or of a High Court in the discharge of his duties.‡

### **The Subordinate Judiciary.—The J. P. C. observed :**

“It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important,

\* Para. 332. † Paras. XXVII, and XVIII. ‡ Sec. 86 (i).

perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges."\*

The Committee also thought that :

"Provisions, settling definitely the nature of the administrative superintendence to be exercised by the High Courts over the Subordinate Courts in a Province, should find a place in the New Constitution."†

It recommended that a strict rule should be adopted and enforced that—

"recommendations from, or attempts to exercise influence by members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be."‡

The actual provisions of the Act in respect of the Subordinate Judiciary are described in Chapter XVI.

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\* Para 337. † Para 334. ‡ Para 338.

Need for  
preserving  
their inde-  
pendence

Under the  
administra-  
tive control  
of the High  
Courts

Recommen-  
dations and  
attempts to  
exercise  
influence

## CHAPTER XVI

### THE SERVICES OF THE CROWN IN INDIA

Importance of the Services ; Safeguards for the Services ; British Element in the Services ; Classification of the Public Services ; the Defence Services ; the Civil Services of the Crown in India ; Services recruited by the Secretary of State ; Provincialization of the Services ; Conditions of Service ; Provisions in respect of Chaplains ; Civil Services recruited by the Governor-General and the Governors ; Special Provisions regarding Police Forces ; Special Provisions regarding Judicial Officers ; Special Provisions in respect of the Political Department ; Protection of Certain Existing Officers ; Special Provisions in respect of the Staffs of the High Commissioner and the Auditor of the Indian Home Accounts ; The Public Service Commissions ; General Provisions in respect of the Services ; Provisions Regarding Pensions, etc. ; General Remarks.

The position of the Services in the administration of the country

**Importance of the Services.**—The Public Services always play a silent but important part in the public administration of a country. If “that is best, which is administered best” has any meaning, it means that the success of a Constitution, howsoever well-devised it may be, depends on how its actual provisions are put into practice, or in other words how the public servants discharge their public duties. A contented and efficient Public Service lends stability to the Constitution which it otherwise lacks, as while the men at the helm of affairs come and go in accordance with the exigencies of party politics, the Services remain. With their accumulated experience of men and matters, they help the professional politician at the top, who more often than not, is new to the task of administration.

Position of the Services in India

If all this is true of other countries, it is doubly so of India, where the masses, till recently, have been under a bureaucratic rule. The Civil Services here have not merely occupied a position of special importance, enjoying special salaries, emoluments, privileges and powers regarding administration, but have also taken a prominent part in the decision of public policies. They virtually controlled the working of the administrative machine, as with the exception of a few highest offices, such as that of the Governor-General and the Governors of some of the Provinces, almost all the civil offices in India were either

occupied by them, or at least were open to them. In course of time they have acquired vested rights in respect of salaries, pensions, leave, etc., which they are determined to safeguard at all costs even under the changed conditions.

**Safeguards for the Services.**—The Joint Parliamentary Committee observed in this connection :

"The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide. The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new ; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them."\*

Nobody need quarrel with the J. P. C. over this observation. But these Services must be national and must be imbued with the idea of national public service. The members of the Services must regard themselves as public servants and must feel responsible to the people, rather than regard themselves as the masters of the people and responsible to some authority alien to the latter. This is, unfortunately, true in the case of the Public Services in India. There is another peculiar feature of the Indian Public Services that, generally speaking, they are alien in personnel, spirit, and outlook to the people of the country. There is a strong and dominating British element in the Services which, with certain honourable exceptions, more often than not, finds it difficult to come down to a level where it can understand the needs and the aspirations of the Indian masses. Even the Indian personnel of the Services has not come up to the expectations to the extent one would like. This, however, does not mean that the Indian Civil Services are not efficient or have not done any good to the people of the country ; on the contrary they are very efficient—in fact everything else is sacrificed to efficiency—and have also served the people of the country in their own way.

Vested Interests of the Services

J. P. C.'s Observations on the functions of the Services

The Services must be national

The British Element in the Services

Indian Services are efficient

\* Para. 274.

The Co-operation of the Services is necessary for the success of the new Constitution

The Services must be kept contented

Safeguarding their rights and interests

J. P. C.'s Observations

The strongest support of the Constitution

But taking things as they are, there is no denying the fact that without the active co-operation of the Services, the new Constitution cannot be properly worked out. "The services will be the linch-pin of the new Constitution and success will depend to a certain extent upon their energetic support."\* The importance of the administrative side of the functions of the Service is likely to increase rather than decrease under the new Constitution with expanded Legislatures based on widened franchise, inexperienced Ministers and more frequent ministerial changes. If this is so, the Services must be made to feel contented by the safeguarding of their rights and privileges, and the conditions must be maintained which should attract the proper kind of recruits to the Services. The Chapter on the Public Services in the Act attempts to achieve this—rather it crosses the mark in that way. Provisions are inserted in the Act with the object of safeguarding the existing rights and interests of the Services in respect of pay, emoluments, pensions, leave, right of appeal, appointment, etc., for protecting the Services from political influence and pressure, for assuring their efficiency and impartiality, and for making it worth while for the proper kind of candidates, particularly the British, to offer themselves for recruitment.

**British Element in the Services.**—It may be pointed out here that under the new Constitution, the British element in the Public Services is to be retained almost at its present strength.

The J. P. C. observed in connection with this :

"The United Kingdom, no less than India, owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full. But the question has another and scarcely less important aspect ; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of men, whether British or Indian. Parliament may, therefore, rightly require in the interests of India as well as of this country, not only that the Services are given all reasonable security, but that none is deterred from entering them by apprehensions as to his future prospects and career. It is indeed the interest of India that must be considered above all. The difficulties of the new Constitution will be aggravated in every respect if the administrative machinery is not thoroughly sound. One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department.†

\* Dr. Sir Shafaat Ahmad Khan : The Indian Federation, p. 210.

† Para. 275.

Thus the British element in the Services is to continue. It is intended to continue the present state of affairs in respect of the European and the Indian elements in the Services based on the recommendations of the Lee Commission.

**Classification of the Public Services.**—The Public Services in India may be classified in two broad divisions as the Defence Services and the Civil Services. The latter may be further classified as under :—

(i) The All-India Services recruited and controlled by the Secretary of State.

(ii) The Federal Services under the general control of the Governor-General.

(iii) The Provincial Services under the general control of the Governor.

Special provisions are to be found in the Act in respect of these different classes of the Services.

**The Defence Services.**—The Defence is a reserved Department under the provisions of the new Act. It is placed directly under the charge of the Governor-General, beyond the political control of the popular Ministers. Special provisions are made in the Act in respect of the Defence Services. It is provided that the pay and the allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service are to be such as His Majesty in Council may direct.\* His Majesty in Council may also require that appointments to specified offices connected with Defence shall be made by him or in the way he may direct. His Majesty's power vested in him by any Act or by virtue of the Royal Prerogative is not touched by this provision.† This is perhaps intended to provide for co-ordination, if need be, of the entire policy of Imperial Defence with that of India. The power of His Majesty and of any persons authorized for the purpose by His Majesty to grant commissions in the naval, military, or air-force raised in India extends to the granting of a commission to any person lawfully enlisted or enrolled in that force.‡ This means that His Majesty can grant commissions in the Indian Forces to subjects of Indian States or natives of territories adjacent to India, such as the Gurkhas. The Letters

Pay, allowances and other conditions of service of the Commander-in-Chief

Other Defence Appointments

Commissions in Indian Forces

\* Sec. 2332. † Sec. 23. ‡ Sec. 234.



Control of  
the Secre-  
tary of State

Rights of  
Appeal

Pay to be  
charged on  
the Federal  
Revenues

Civil and  
Personnel

Patent constituting the office of the Governor-General authorises the Governor-General to grant in the name of His Majesty and on his behalf commissions in the Indian Naval Forces, Land Forces, and the Air Force. This provision gives statutory recognition to the distinction in the Indian Army between commissions directly granted by the King and those granted by the Governor-General on his behalf. The Secretary of State, acting with the concurrence of his Advisers, is empowered\* to specify the rules, regulations and orders in respect of the conditions of service of all or any of His Majesty's Forces in India which shall be made only with his previous approval. This asserts the ultimate authority of the Secretary of State over the conditions of service of His Majesty's Forces in India. The rights of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act are kept intact under the Act. The Secretary of State is authorised to receive any memorial from a member of His Majesty's Forces as he or the Secretary of State in Council could receive before the passing of this Act.† The sums regarding pay, allowances, pensions or other sums payable to or regarding persons who are serving or have served, in His Majesty's Forces, and payable out of the revenues of the Federation shall be charged on those revenues. This does not limit the interpretation of the general provisions of this Act charging the defence expenditure on the Federal revenues.‡ This means that the Federal Ministers and the Federal Legislature cannot touch the Defence expenditure in respect of pay, allowances, and pensions, etc., of the military personnel. The above-mentioned provisions, viz., the control of the Secretary of State, with respect to conditions of service, the rights of appeal of the members of His Majesty's Forces in India to the Secretary of State, and the pay, etc., of members of the Forces to be charged on the Federal revenues, also apply to persons who, though they are not members of His Majesty's Forces, yet they hold at present or have held posts in India which are connected with the equipment or administration of those Forces or are otherwise connected with Defence.§ In respect of such officers, the J. P. C observed :

\* Sec. 235. † Sec. 236. ‡ Sec. 237. § Sec. 238.



"They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected. Nevertheless their rights should not be left in doubt. Their pay and pensions would be included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature. There should be no room for misunderstanding on this point."\*

J. P. C.'s  
Observations

The rights of the descendants of those persons who have served in India in the military or the civil service of the Crown for appointment of officers to His Majesty's Army are specially safe-guarded as it is laid down that the same provision as has existed so far, or equal provision must be made for the purpose. The persons who served in Burma or in Aden before their separation from India are to be considered as persons who served in India for the purposes of this provision.†

Rights in  
respect of  
appointment  
of the sons of  
those who  
have served  
in military  
or civil  
service  
safeguarded

**The Civil Services of the Crown in India.**—The Civil Services in India, as has been pointed out above form a very important part of the administrative machine in India. They discharged very important and useful functions in the past. Under the new Constitution their functions are no less important, though their discharge probably requires a little different outlook. In order to keep them contented, many provisions are introduced in the Act which amply safeguard their interests. The most important of these posts were filled up by the Secretary of State. The system is to continue under the new Act.

**Services Recruited by the Secretary of State.**—It is laid down‡ that after the introduction of the Provincial Autonomy under the scheme of the Act, appointments to certain civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service—henceforward to be known as the Indian Police—are to be made by the Secretary of State until it is otherwise determined by Parliament. Subject to this condition, he can also make appointments to any service or services which he may consider necessary to establish for the purpose of getting

Recruitment  
to I. C. S.,  
I. M. S.  
(civil), and  
I. P. S.

\* Para 295. † Sec. 239. ‡ Sec. 244 (1).

Annual  
Statement

Modification  
of this  
Provision

Provincial-  
ization does  
not mean  
complete  
Indianization

suitable persons to fill civil posts in connection with the discharge of the functions of the Governor-General to be exercised in his discretion under the provision of this Act. The Secretary of State may from time to time prescribe respective strengths of these services.\* He shall also cause to be laid annually before each House of Parliament a statement in respect of the appointments and vacancies regarding these services. The Governor-General is duty bound to keep the Secretary of State informed about the operation of this provision. He may if he thinks fit make recommendations for the modifications of this provision. The Governor-General is to perform these functions in his discretion.

**Provincialization of the Services.**—Strong objection was taken by the British India Delegation to the recruitment to these Services by the Secretary of State. It considered that after the passing of the Constitution Act, recruitment for the Central Services should be by the Federal Government and for the Provincial Services, including the Indian Civil Service and the Indian Police, should be by the Provincial Governments. These Governments should have full power to determine the pay and other conditions of service for future recruits and also the proportion of Europeans that should be recruited. The continued recruitment of these vital Services by the Secretary of State is incompatible with Provincial Autonomy. According to Dr. Sir Shafaat Ahmed Khan . . .

“ Provincial self-government logically necessitates control by the Provincial Government over the appointment of its servants. A public servant cannot serve two masters. If he is appointed by the Secretary of State, it may be extremely difficult for the Provincial Government to exercise sufficient control and supervision. The authority of such Government may be undermined, and in some cases actually flouted by a public servant who is determined to assert his legal right.”†

Thus the process of provincialization of the Services, started as a result of the recommendations of the Lee Commission, ought to have been continued to their logical conclusion by provincialization of all the

\* Sec. 244 (2, 3, 4). † The Indian Federation, p. 216.

Public Services in the Provinces. But, although provincialization was urged, yet nobody meant complete Indianization of these Services to the entire exclusion of the British element. Generally speaking it was felt that for some time to come it was essential to have some trained and experienced British administrators in certain key positions with the idea of protecting the new experiment from unnecessary risks and hazards.

The J. P. C., however, went even further than the Services Sub-Committee of the First Round Table Conference and the White Paper in this respect. It appreciated the force of the argument that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy, but tried to point out the dangerous conclusions that might be drawn from it. It further argued :

" But the loyalty with which officers of the All-India Services have served the Local Governments under whom they work, notwithstanding that these Services are under the control of the Government of India and the Secretary of State, has a long tradition behind it ; nor has any Local Government felt difficulty in regard to maintaining discipline and securing full obedience of the Services on account of that control. Moreover, the evidence given before us confirmed the earlier conclusions of the Lee Commission and of the Statutory Commission that, with negligible exceptions, the officers of these Services have maintained excellent relations with the Indian Ministers under whom they have been working. Subject to certain qualifications to which we refer hereafter, we are of opinion that recruitment by the Secretary of State for the All-India Services, where it still continues, should come to an end except in the case of the Indian Civil Service and the Indian Police ; the functions performed by members of these two Services are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital to the stability of the new Constitution itself, that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously with the introduction of fundamental changes in the system of government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion as proposed in the White Paper, that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion . . . '\*"

Provincialization of I.C.S. and I.P.S. not recommended

No risks

Recruitment by the Secretary of State recommended

Regarding the Indian Medical Service (Civil), the Committee wrote.

J.P.C.'s  
Recommendations  
in respect of  
I.M.S. (Civil)

"... We are, however, convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers. In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an overriding claim."\*

It was also pointed out in Parliament :

"It is proposed in the Act to reserve two main services : the Indian Civil Service and the Indian Police. We regard these services as absolutely vital to the future of India, they have vital tasks to perform, and in order to fulfill these tasks we must adhere to the form of recruitment suggested in the Act.

Need of  
avoiding a  
big change  
in the  
method of  
recruitment  
at the time  
of the Con-  
stitutional  
changes

"I think it would be a mistake, at a time when we are introducing such vast changes in the Government of India, to make this immense change as well. Certain services have been transferred ; we intend these two important services should remain. Following the advice we have received, we consider that it would be a mistake to make another big change in the method of recruiting at a time when we are making these changes in the Government of India. There is no question of absolute finality in our decision. The Joint Select Committee recommended that after a certain period there shall be an inquiry into the operations of these services . . . there is, therefore, this provision for a future enquiry."†

The White Paper proposed that at the expiry of five years after the commencement of the Act an enquiry should be held into the question of future recruitment of these two Services. The J. P. C. agreed with the principle of the enquiry but doubted the wisdom of fixing a definite and unalterable date for holding of this enquiry. Sir Samuel Hoare observed in respect of this point :

Enquiry in  
respect of  
Services  
recommended

"It is very important, from every point of view, that we should make it clear that we have not abandoned the attitude that at some time in the future we have to have an enquiry . . . We however, desire to make it clear that we contemplate an enquiry at some time in the future, and that it is very important that the Secretary of State should be kept regularly informed by the Governor-General as to the conditions in existence, and as to any changes that are taking place . . . The position of Parliament is not compromised. At the same time we make it clear, both to the House and Indian's

\* Para 299. † Parliamentary Debates. 300, Cols. 628—29.

in India, that we have not abandoned the position maintained in the Joint Select Committee, that, in the nature of things, the constitutional changes must react upon service conditions in the future, and that that reaction must at some time in the future, involve an inquiry."\*

There is a special provision† regarding irrigation. In order to secure efficiency in that Department in the Provinces, the Secretary of State may appoint persons to any civil service concerned with irrigation until it is otherwise determined by the Parliament.

The J. P. C. observed in respect of future recruitment to the Irrigation Services :

" The continued recruitment of an adequate number of highly qualified engineers, European as well as Indian, is clearly essential to the efficiency of the irrigation system, especially in the North West of India, on which the prosperity and indeed the existence of millions of the population depends . . . . But after a close examination of the question, our conclusion is that the Irrigation Service ought to become a Provincial Service ; and we are not convinced that even in the Punjab, which is perhaps the crucial case, the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service . . . The question of irrigation is scarcely of less importance in Sind, but we think the Governor's special responsibility for the Sukkur Barrage is there a sufficient safeguard."‡

" Nevertheless we are of opinion that a power to reserve recruitment should be reserved to the Secretary of State, if a Provincial Government unfortunately proved unable to secure a sufficient number of satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced ; . . . ."

In addition to the abovementioned powers, the Secretary of State also continues to make appointments of chaplains who are under the Ecclesiastical Department, which is a Reserved Department under the Act.§

He has also been given powers to reserve certain posts for those who are appointed by him. He can make rules¶ specifying the number and character of the civil posts which are to be filled up by persons appointed by him. This does not apply to posts in connection with any function of the Governor-General to be discharged in his discretion. The other posts, called

Special provisions in respect of Irrigation

J. P. C. observations

The Appointments of chaplains

The Reserved Posts

\* Parliamentary Debates Vol. 302, Cols. 1001-1002. † Sec. 245.

‡ Para 309. ¶ Para 310. § Sec. 269. ¶ Sec. 246.

Rules to be  
aid before  
Parliament

the Reserved Posts, except under conditions as may be prescribed in the rules, cannot, without the previous sanction of the Secretary of State, be kept vacant for more than three months, or be filled otherwise than by the appointment of a person appointed by the Secretary of State, or be held jointly with any other such post. Appointments and postings to these "Reserved Posts" must be made in the case of Federal Posts by the Governor-General and in the case of Provincial Posts by the Provincial Governor, both exercising their individual judgment. The above-mentioned rules must be laid before each House of Parliament as soon as it may be possible; and if the House of Parliament, within the next subsequent 28 days after a particular rule has been laid before it, passes a resolution that the rule shall be annulled, the rule shall henceforth be null and void. This, however, does not prejudice the validity of anything already done under the rule or the making of a new rule.

Rules in respect of the conditions of service to be made by the Secretary of State

Certain Rules to be made by the Governor-General and the Governors

Rules cannot give less favourable terms

Orders in respect of promotion leave, suspension

**Conditions of Service.**—The conditions\* of service in respect of pay, leave and pension, rights regarding medical attendance of all persons appointed to a civil service or civil post by the Secretary of State shall be such as may be prescribed by rules to be made by him. Regarding other matters too the conditions will be such as may be prescribed by rules to be made by him, in so far as he thinks proper to do so. If and in so far this is not done by him, the conditions of service shall be prescribed by rules to be made by the Governor-General or some person or persons authorised by him for the purpose in respect of persons serving in the Federal sphere, and by the Governor of the Province or some person or persons authorised by him in respect of persons serving in the Provincial sphere. No such rule can give to any such person less favourable terms respecting remuneration or pension than by the rules in force on the date of his first appointment. In the case of such a person serving in connection with the affairs of the Federation, and in the case of such a person serving in connection with the affairs of a Province, only the Governor-General and the Governor respectively

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\* Sec. 247

exercising their individual judgment, can make any promotion or any order for suspension from office. If such a person is suspended from office, his remuneration during the period of suspension must not be reduced except to such extent as may be ordered by the Governor-General exercising his individual judgment, or by the Governor exercising his individual judgment, as the case may be. The salary and allowances of such a person are charged on the revenues of the Federation if he is serving in the Federal sphere, and on the revenues of a Province if he is serving in the Provincial sphere. If, however, such a person is serving in connection with the railways in India, only that much of his salary and allowances are to be charged on the Federal revenues as is not paid out of the Railway Fund. In addition to the salary and allowances, pension payable to such a person or in respect of him and government contributions to any pension fund or provident fund of such a person are to be charged on the revenues of the Federation. Without the consent of the Secretary of State in each case, no award of a pension less than the maximum pension that can be allowed under these rules can be made. No rules made under these provisions limit or abridge the power of the Secretary of State to deal with the case of any person, serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable. And also no rules made under these provisions by any person except the Secretary of State limit or abridge the power of the Governor-General or a Provincial Governor to deal with the case of any such person in a manner he may think just and equitable. The case of such a person shall not be dealt with in any manner less favourable to him than that provided by the rule applicable to him.

If such a person is aggrieved by an order affecting his condition of service and does not receive the proper redress on proper application to the person by whom such an order has been made, he may, without affecting his right of obtaining redress in any other way, complain to the Governor-General, if he is serving in the Federal sphere. If he is serving in the Provincial sphere, he may complain to the Governor of the Province. The Governor-General or the

Remuneration during the period of suspension

Salary and Allowances charged on the Revenue

Person serving in connection with the Railway

Pension and Contributions to Provident Fund

Power of the Secretary of State to deal with the case of such civil servant as he thinks fit

Case not to be dealt with less favourably

Right of complaint to the Governor-General and the Governor

Order in respect of punishment, censure, pension, etc., to be made by the Governor-General or the Governor

Appeal to the Secretary of State

Grant of compensation

Provisions are applicable to some other civil and military servants

Governor, as the case may be, exercising their individual judgment, shall cause such action to be taken as they think just and equitable. Only the Governor-General in the case of a person serving in the Federal sphere, and the Governor in case of a person serving in the Provincial sphere, exercising their individual judgment, can make any order which punishes or formally censures or affects adversely his emoluments or rights in respect of pension or decides adversely the subject matter of any memorial of such a person. The latter can also appeal to the Secretary of State against any order made by any authority in India, which punishes or formally censures him or alters or interprets to his disadvantage any rule regulating his conditions of service. Any sums ordered to be paid out of the Federal revenues, or the Provincial revenues to such a person as a result of an appeal made to the Secretary of State, shall be charged upon the revenues of the Federation or the Province as the case may be.\* The Secretary of State is empowered to sanction any compensation from the Federal revenues or the Provincial revenues to such a person, if he thinks that anything done under this Act affects adversely the conditions of service of such a person. The sums payable as compensation shall be charged upon the revenues of the Federation or the Province as the case may be. This provision, however, does not in any way prohibit expenditure by the Governor-General or the Governor from the revenues of the Federation or a Province respectively by way of compensation to persons who are serving or have served His Majesty in India in cases where the above-mentioned provisions have no effect, viz., in cases of civil servants not appointed by the Secretary of State.† The above mentioned provisions also apply in relation to any person who was appointed before the enforcement of this Act by the Secretary of State in Council, and also to those persons who hold or have held reserved posts, even though they were not appointed by the Secretary of State; and to those civil servants who are or were at the time of their first appointments

\* Sec. 248. † Sec. 249.



officers in His Majesty's Forces. Civil servants holding commissioned offices before the commencement of the Provincial Part of this Act cannot be given less favourable terms regarding remuneration or pension by any rule that might be made than by the rules previously in force. Any Federal or Provincial liability regarding pension, etc., in respect of such a person is to be considered a liability arising under a statute passed before the commencement of this Act.

Holders of commissioned offices not to receive less favourable terms

These rules regarding conditions of service, pensions, etc., described above, also apply to persons serving in the Federal Railway Services, but in this case the functions of the Governor-General are to be performed by the Federal Railway Authority.

Rules applicable to the Railway Services

**Provisions in respect of Chaplains.** Under the Act the Ecclesiastical Department has been preserved as a Reserved Department. It is specially provided\* that the establishment of Chaplains to minister in India to be appointed by the Secretary of State shall continue. All those provisions which are applicable to the civil services recruited by the Secretary of State are applicable to the Chaplains with necessary modifications. It is provided that so long as establishments of Chaplains are maintained in the Provinces of Bengal, Madras, and Bombay, two members of that establishment in each of the above-mentioned Provinces must always be ministers of the Church of Scotland, who shall be entitled to have out of the Federal revenues such salary as is from time to time allotted to the Military Chaplains in those Provinces. The above-mentioned ministers of the Church of Scotland must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland. They shall be subject to the spiritual and Ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh whose judgment shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Chaplains to continue in service

Provisions applicable to them

Certain Chaplains to belong to the Church of Scotland

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\* Sec. 269.

**Civil Services Recruited by the Governor-General and the Governors.**—The Civil Services, other than those recruited by the Secretary of State as described above are to be recruited by the Governor-General and the Governors in their respective spheres.

Aim of the  
J. P. C.

"The Joint Select Committee aimed at making the Governor-General and the Governor responsible for the Central and Provincial services respectively in precisely the same way as the Secretary of State is responsible for the Imperial services to which he makes appointments, and expressed a hope that Federal and Provincial and Legislatures will pass local Acts guaranteeing to the services security on the lines on which the Secretary of State has framed his regulations for services recruited by him."<sup>\*</sup>

The Act tries to protect and guarantee all the important rights of the civil servants belonging to this class.

The Committee also enunciated another important principle that all the Services in India are the Services of the Crown. It observed :

All the  
Services  
are Crown  
Services

"It is natural that the process by which during recent years Provincial Service officers have been gradually substituted for all India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services . . . . But, whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, *i.e.*, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services."<sup>†</sup>

J. P. C.'s  
observations

In the opinion of the Committee the efficiency and morale of these Services will largely depend in the future on the development in India of the same conventions as have grown up in England, *viz.*, the Legislature should have no control over the appointment or promotion and only a very general control over conditions of service of the civil servants. This means that the Governor-General and the Governors should be recognized as heads of the Central and the Provincial Services, respectively. The Committee, therefore, recommended that—

<sup>\*</sup> Dr. Sir Shafaat Ahmad Khan : The Indian Federation, p. 211.  
<sup>†</sup> Para. 291.

"The Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services. Appointments to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would therefore follow that no public servant appointed by the Governor-General or Governor will be subject to dismissal, save by order of the Governor-General or Governor."\*

The Governor-General and the Governors to be the recognized heads of the Services

It was desirable in the view of the Committee that the Central and the Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. Those should not be in substance inferior to those of persons appointed by the Secretary of State in regard to the protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion, and protection against such arbitrary alterations in the organization of the services themselves as might damage the professional prospects of their members generally. In respect of the latter, the Committee observed :

The status and the rights of the Services to be protected

"On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organization ; yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognized cadre of higher paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers by law upon the Executive the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance."†

Thus the Committee aimed at protecting all the important rights of these Services, and the Act attempts to do that.

It is laid down in the Act‡ that, except as expressly provided by the Act, appointments to the civil services and the civil posts in India other than those recruited by the Secretary of State are to be made by the Governor-General or such persons as he may direct as far as the Federal services and posts are connected, while similar powers are to be exercised by the Provincial Governors or the persons directed by them in case of the Provincial services and posts. Subject to the provisions of this Act the

Governor-General and the Governors to be the appointing authorities.

\* Para. 292. † Para. 293. ‡ Sec. 241 (1, 2, 3, 4, 5)

Rules in respect of the condition of service

Persons employed temporarily

Limitations of the rule making powers

Conditions of Service to be regulated by the appropriate Legislature

condition of service of these civil servants are to be such as may be prescribed in respect of the Federal Services by rules made by the Governor-General or the persons authorised by him for the purpose, and in the case of Provincial Services by rules made by the Provincial Governors or by persons authorised by them for the purpose. This is, however, subject to the provision that it is not necessary to make rules for regulating the conditions of service of persons employed temporarily on the condition that their employment may be terminated on one month's notice or less. Moreover it is not necessary to extend the scope of the rules to any matter which appears to the rule-making authority to be a matter not suitable for regulations by rule in the case of a particular class of civil servants. This rule-making authority of the Governor-General and the Governor is subject to certain limitations. It is laid down that the above-mentioned rules shall be framed so as to secure that in the case of a civil servant serving before the introduction of the Provincial Autonomy, no order altering or interpreting to his disadvantage any rule governing his condition of service shall be made except by an authority who had the power to make such an order on March 8th. 1926, or by a person empowered by the Secretary of State to give directions in respect of the changing of that rule. Moreover such a civil servant has the same rights of appeal to the same authorities against any order punishing or formally censuring him, or altering or interpreting to his disadvantage any rule regulating his conditions of service, or terminating his appointment before the age fixed for superannuation, as he had before the introduction of Provincial Autonomy, or he shall have similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person authorised by him for the purpose. It is laid down that every other civil servant, viz., one who was not serving before the enforcement of the Provincial Part of this Act on April 1st, 1937, has at least one appeal against any order as mentioned above which is not an order of the Governor-General or a Governor. This means that if any disciplinary action is taken against any such civil servant by any authority other than the Governor-General or a Governor, say by a Minister, it shall be subject to at least one appeal. Subject to these and other provisions of the Act, the conditions of service of the civil

servants in India may be regulated by the appropriate Legislature. though the above-mentioned rights in respect of an appeal, etc., of the civil servants cannot be taken away by any such Act. Moreover no rules made under this provision and no Act of any Indian Legislature can limit or abridge the power of the Governor-General or a Governor to deal with the case of any Indian civil servant in a manner which may appear to him to be just and equitable, provided that even the Governor-General or a Governor cannot deal with such a case in any manner less favourable to the person concerned than that provided by the rule or Act.\*

Power of the Governor-General or a Governor to deal with the case of any Indian Civil Servant

The provisions also apply to the persons serving in the Railway Services of the Federation but the functions of the Governor-General mentioned above are to be performed by the Federal Railway Authority. But in framing rules for the regulation of recruitment to superior Railway posts, the Federal Railway Authority must consult the Federal Public Service Commission. In recruitment to such superior posts and other Railway posts, it must pay due regard to the past association of the Anglo Indian-community with Railway Services in India, and specially to the specific class, character, and numerical percentages of the posts held by the members of the Anglo-Indian community, and the remuneration attaching to such posts. It shall also obey any instruction which may be issued by the Governor-General with the intent of securing as far as may be possible to each community in India a fair representation in the Federal Railway Services. Except as mentioned above it is not obligatory for the Federal Railway Authority to consult the Federal Public Service Commission or otherwise make use of its services.†

The Federal Railway Services

Special Rights of the Anglo-Indian Community safeguarded

A similar safeguard for the rights of the Anglo-Indian Community is assured in the action in respect of the framing of the rules for the regulation of recruitment to posts in the Customs, Postal and Telegraph Services‡ by the Governor-General or by persons authorised by him for the purpose. The Government of India has only recently framed rules showing favourable treatment to the Anglo-Indian

\* Sec 241. † Sec. 242 (1 & 2). ‡ Sec. 242 (3).

community in respect of the conditions of Service and remuneration in these Departments.

Similar provisions, as described above, apply to appointments to and to persons serving on, the staff attached to the Federal Court or to a Provincial High Court, but the functions of the Governor-General mentioned above are to be performed by the Chief Justice of India in the case of the Federal Court and by the Chief Justice of the High Court in the case of a Provincial High Court. But in case of the Federal Court the Governor-General and in the case of High Court the Governor may in his discretion require that in certain cases persons not already attached to the court shall not be appointed to any job connected with the court except after consulting the Federal Public Service Commission or the Provincial Public Service Commission respectively. Moreover rules made by a Chief Justice for the above-mentioned purposes in so far as they relate to salaries, allowances, leave and pensions require the approval of the Governor-General or the Governor as the case may be.

Application  
of these  
principles to  
the staffs of  
the Courts

**Special Provisions Regarding Police Forces.**—It is laid down in the Act that notwithstanding anything in the foregoing provisions, the conditions of service of the subordinate ranks of the various Police Forces in India are to be such as may be determined by the Acts in respect of those Forces.†

Provisions  
not appli-  
cable to the  
Judges of  
the Federal  
Court and  
the High  
Court

**Special Provisions Regarding Judicial Officers.**—The provisions described in this chapter do not apply to the Judges of the Federal Court or of the High Courts, but a member of the Civil Service acting temporarily as a Judge of a High Court is not to be considered a Judge of that Court for the purpose of these provisions. This does not prevent the Orders in Council relating to salaries, leave and pension of the Judges of the Federal Court or of a High Court from applying to Judges of these Courts if they were members of a Civil Service of the Crown in India before their appointments as Judges, such rules relating to that Service as may appear to His Majesty to be properly applicable to them. Moreover this does not exclude the office of the Judge of the Federal Court or of a High Court from the operation of the provisions with respect to the eligibility for civil office of persons who are not British subjects. Pensions of the Judges

Pensions of  
Judges

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\* Sec. 242 (4). † Sec. 243.

and other liabilities in connection with them before April 1st, 1937, shall be considered as a liability arising under a statute passed before that date.\*

**The Subordinate Judiciary.**—The J. P. C. laid great stress on keeping the Subordinate Judiciary impartial and impervious to any political influence. To achieve that object special provisions are inserted in the Act. Appointments, posting and promotion of District Judges in a Province, including Additional District Judges, Joint District Judges, Assistant District Judges, Chief Judge of a small Cause Court, Chief Presidency Magistrate, Sessions Judges, Additional Sessions Judges, and Assistant Sessions Judges, are to be made by the Governor exercising his individual judgment, but the High Court is to be consulted in respect of such appointment. Nobody who is not already in the service of His Majesty, can be appointed a District Judge, if he is not a Barrister, a member of the Faculty of Advocates in Scotland, or a Pleader of not less than five years standing. He must also be recommended by the High Court for the purpose.† Appointments to the Subordinate Civil Judicial Service, *i.e.*, the service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of a District Judge, are also to be made by the Governor from among the persons included in the list made for the purpose after an examination by the Provincial Public Service Commission. These appointments are subject to such regulations that might be made from time to time by the Governor in respect of the communal representation in these services. The Provincial Governor also makes rules defining the standard of qualifications for the persons desirous of joining the subordinate civil judicial service after consulting the Provincial Public Service Commission and the High Court.‡

Appointment, Posting, and Promotion of District Judges

Appointment to the Subordinate Civil Judicial Service

Standard of Qualifications

The posting, promotion, grant of leave to persons belonging to these Services but holding a post below the rank of a District Judge are placed in the hands of the High Court subject to the right of appeal of such persons under other provisions of this Act. The High Court cannot deal with such persons otherwise than in accordance with the conditions of the service prescribed under the above mentioned provisions. In order to assure efficiency of the Subordinate

Posting, promotion, grant of leave, etc., to vest with the High Courts

\* Sec. 253. † Sec. 254. ‡ Sec. 255.

Subordinate  
criminal  
magistracy

Criminal Magistracy, it is laid down\* that no recommendation shall be made for the grant of magisterial powers, or for enhancing or withdrawing any such powers from any person without consulting the District Magistrate or the Chief Presidency Magistrate as the case may be. It shall be noticed here that no special provision is made for the recruitment of the Subordinate Criminal Magistracy. Presumably the old position is to continue in this case.

Officers of  
the Political  
Department

**Special Provisions in respect of the Political Department.**—The provisions in respect of civil servants in general mentioned above do not apply† to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with the Indian States. Those persons who were so employed before April 1, 1937, continue to hold their offices, and their old rights and privileges are safeguarded. These persons also hold office during His Majesty's pleasure.

Protection of  
existing  
officers of  
certain  
Services

**Protection of Certain Existing Officers.**—Only the Governor-General, exercising his individual judgment, and the Governor, exercising his individual judgment, can abolish a civil post held by a person who was a member before April 1, 1937, of A CENTRAL SERVICE CLASS I, CENTRAL SERVICE CLASS II, RAILWAY SERVICE CLASS I, RAILWAY SERVICE CLASS II, or a PROVINCIAL SERVICE, if the abolition of such a service adversely affects any such person. Similar provision is made regarding the making of any rule or order affecting adversely the pay, allowances or pensions, payable to or in respect of a person appointed before April 1, 1937, to CENTRAL SERVICE CLASS I, RAILWAY SERVICE CLASS I, or THE PROVINCIAL SERVICE. No order upon memorial submitted by any such person can be made except by the Governor-General or the Governor, as the case may be, exercising his individual judgment.

In relation to persons appointed to civil service by the Secretary of State, or in relation to a person who is an officer in His Majesty's Forces, the foregoing provisions apply subject to the condition that the above-mentioned powers of the Governor-General, or the Governor are to be exercised by the Secretary of State.‡

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\* Sec. 256. † Sec. 257. ‡ Sec. 258.



The salaries and allowances of persons who were appointed before April 1, 1924, by some authority other than the Secretary of State, to a superior service or post, are charged on the Federal or the Provincial revenues according to the nature of their services. If, however, any such person is serving in connection with the railways in India, only that much of his salaries and allowances are to be charged on the Federal revenues as is not paid out of the Railway Fund. Any pension payable to such a person or the contribution of the Government to any provident fund or pension's fund in respect of such a person is also to be charged on the revenues of the Federation. These provisions also apply to persons holding superior posts, who retired before April 1, 1924.\* The pension of a civil servant who has retired from His Majesty's service before April 1, 1897, is to be paid out of the Provincial revenues or the Federal revenues according to the nature of the service.†

**Special Provisions in respect of the Staffs of the High Commissioner and the Auditor of the Indian Home Accounts.**—Persons who before April 1, 1937, were members of the staff of the High Commissioner for India or of the staff of the Auditor of Indian Home Accounts are also protected by the special provisions in this Act. Although they serve in England, yet these services are to be considered as if they are rendered in India. The appointments to the staff of the Auditor of Indian Home Accounts, however, must be made by the latter subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General given in his discretion.‡ The persons who were members of the staff of the High Commissioner for India or of the staff of the Auditor of the accounts of the Secretary of State in Council before the enforcement of this Act are to be kept in service, on not less favourable conditions in respect of service, remuneration or pension. The salaries, allowances and pensions of these persons are to be charged on the revenues of the Federation.§

**The Public Service Commissions.**—The Act provides for a Public Service Commission for the Federation and for a Public Service Commission for each Province ; but two or more Provinces may agree to have one Public Service Commission, or that the Public Service Commission for one of the Provinces shall serve the

In respect of certain officers serving in or before 1924

Staffs of High Commissioner and Auditor of Indian Home Accounts

Conditions of Service of existing Staff

The Federal Public Service Commission and the Provincial Public Service Commissions

\* Sec. 259. † Sec. 260 (1). ‡ Sec. 251. § Sec. 252.

needs of all the Provinces. This agreement may contain the necessary incidental and consequential provisions. In the case of an agreement that a group of Provinces shall be served by one Public Service Commission, the agreement is to specify as to which Governor or Governors are to perform the functions of the Governor of a Province in relation to the Public Service Commission. If the Governor of a Province requests the Public Service Commission for the Federation, the latter may agree with the approval of the Governor-General to serve wholly or partly the needs of that particular Province.\*

Appointment  
of the Chair-  
man and the  
Staff

Composition  
and Condi-  
tions of  
Service to be  
determined  
by the  
Governor-  
General or  
the Governor

Ineligibility  
for any  
other post

Duties and  
Functions of  
the Com-  
missions

The chairman and other members of the Federal Public Service Commission are to be appointed by the Governor-General in his discretion. Similarly in the case of a Provincial Public Service Commission, they are to be appointed by the Governor in his discretion. In both the cases at least one half of the members are required at the dates of their appointments to have held office for at least ten years under the Crown in India. The number of members of the Commissions, their tenure of office, the conditions of service, and also the numbers of the staffs of the Commissions along with their conditions of service are to be determined by the Governor-General or the Governor in their respective spheres.†

In order to assure independence and impartiality of the Commissions, it is laid down that the Chairman of the Federal Public Service Commission is not eligible for further employment under the Crown in India. The Chairman of a Provincial Public Service Commission is eligible for appointment as a Chairman or a member of the Federal Public Service Commission, or as a chairman of another Provincial Commission but not for any other post under the Crown in India. Lastly other members of the Federal or of the Provincial Commissions are not eligible for any other appointment under the Crown in India without the approval in their discretion of the Governor-General and the Governors in their respective spheres.‡

The Act confers the duty of holding examinations to the Services of the Federation and the Services of the Province on the Federal and the Provincial Public Service Commissions respectively. If a request is made by any two or more Provinces for the pur-

\* Sec 264. † Sec. 265 (1 and 2). ‡ Sec. 265 (3).

pose, the Federal Public Service Commission is to assist those Provinces in framing and working schemes of joint recruitment for their Forest Services or any other Service.\*

The Secretary of State, the Governor-General and the Governors, in respect of appointments made by them in their discretion, have the power to frame regulations showing the matters on which either generally, or in any particular class of case, or in any particular circumstances, a Public Service Commission may not be consulted. Subject to these regulations, the Federal and the Provincial Commissions are to be consulted on:†

Where the Commission may not be consulted

(a) all matters relating to methods of recruitment to Civil Services and for civil posts :

(b) the principles for making appointments to Civil Services and posts, making promotions and transfers from one service to another and on the suitability of candidates ;

Where the Commissions are to be consulted

(c) all disciplinary matters including memorials or petitions in respect of a person in the civil employ of His Majesty in India ;

(d) any claim by or in respect of a civil servant that expenditure incurred by him in defending legal proceedings instituted against him regarding acts done or purporting to be done in the execution of his duty should be paid out of the Federal revenues or the Provincial revenues, as the case may be ;

(e) any claim for the award of pension regarding injuries sustained by a person while in the civil employ of His Majesty in India and also the question as to the amount of that pension ; and

(f) on any other matter which may be referred to them by the Governor-General or the Governor in their discretion.

A Public Service Commission, however, may not be consulted regarding the way in which appointments and posts are to be allocated between the various communities in the Federation or a Province, or in the case of the subordinate ranks of the various Police Forces in India in respect of methods of recruitment, principles for making appointments, promotions and transfers, and disciplinary matters.‡

Communal proportions in the Services beyond the power of advice of the Commissions

\* Sec. 256 (1 & 2). † Sec. 266 (3). ‡ Sec. 266 (4).

The Legis-  
latures may  
extend the  
functions  
of the  
Commissions

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ai  
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Savings

Expenses  
charged on  
the revenues

Indemnity  
for past acts

Provision\* is also made for the exercise of additional functions by the Federal Public Service Commission or by the Provincial Public Service Commissions by an Act of the Federal Legislature or the Provincial Legislatures, as the case may be. No Bill or amendment for the purpose, however, can be introduced or moved without the previous sanction of the Governor-General or the Governor in their respective spheres. Moreover such an Act is to provide that the additional functions conferred by it on the Commissions are not exercisable in respect of persons appointed by the Secretary of State, officers in His Majesty's Forces or holders of Reserved Posts except with the consent of the Secretary of State. And in the case of a Provincial Act, such additional functions are not to be exercisable in relation to a person who is not a member of the Provincial Service except with the consent of the Governor-General.

The expenses of the Commissions, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commissions are charged on the Federal and the Provincial revenues, as the case may be.

**General Provisions in respect of the Services** — Besides the above-mentioned provisions, some general provisions are included in the Act for indemnifying civil servants for duties done in the past, giving them protection against prosecution and suits, and also providing as to payment of certain pensions. In view of threats which were made in certain quarters, especially against the Police, the J. P. C. thought that it was justifiable to give a measure of protection to men who have done no more than their duty in very difficult and trying circumstances. It, therefore, agreed with the proposal of the White Paper that the civil servants should be granted a full indemnity against civil and criminal proceedings in respect of all acts done before the commencement of the Constitution Act in good faith, and done or purported to be done in the execution of duty.† A provision to this effect has, therefore, been introduced in the Act. It is laid down that no civil and criminal proceedings shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duties as a civil servant in India or Burma before the commencement of the Provincial

\* Sec. 267. † Para 283.

and the Federal Parts of the Act, except with the consent of the Governor-General and of the Governor in their discretion in their respective spheres. Such proceedings, instituted whether before or after the enforcement of this Part of this Act, against a civil servant in India or Burma in respect of acts connected with his official duties must be dismissed, unless the court is satisfied that the acts complained of were not done in good faith. Where such proceedings are dismissed, the costs incurred by the defendant in so far as they are not recoverable from those persons who instituted the proceedings, shall be charged on the Federal revenues or the Provincial revenues according to the employment of the persons concerned.\*

The civil servants continue to enjoy the protection against prosecution and suits afforded to them by Section 197 of the Code of Criminal Procedure and Sections 80 to 82 of the Code of Civil Procedure. No Bill or amendment to abolish or restrict the protection afforded to certain civil servants by these Sections can be introduced or moved in the Federal Legislature or the Provincial Legislature, without the previous sanction of the Governor-General in his discretion, or the Governor, in his discretion. The powers to sanction prosecutions and the determination of the court, the person, and the manner in which a public servant is to be tried, shall be exercised by the Governor-General exercising his individual judgment in case of a person employed in connection with the affairs of the Federation, and by the Governor exercising his individual judgment in the case of a person employed in connection with the affairs of a Province. This, however, does not restrict the power of the Federal or a Provincial Legislature to amend Section 197 of the Indian Code of Criminal Procedure with the previous sanction of the Governor-General or the Governor as mentioned above. Further, a provision is made that in case a civil suit is instituted against a public officer in respect of his official duties, the cost incurred by that officer, or any damages or cost ordered to be paid by him shall be charged on the Federal revenues or the Provincial revenues, if the Governor-General or the Governor, as the case may be, exercising individual judgment, order to that effect.†

Protection  
against  
prosecution  
and suits

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\* Sec. 270. † Sec. 271.

Payment of  
certain  
Pensions

Exemption  
of these  
Pensions  
from  
taxation in  
India

Family  
Pensions  
Fund

The Order  
in Council

**Provisions Regarding Pensions, etc.**—The pension of persons who have served under the Governor-General in Council before the commencement of this Act, or after that date are officers in His Majesty's Forces, or have been appointed to a civil post in India by His Majesty or the Secretary of State, or hold reserved posts, shall be paid on behalf of the Federation or the Province by or according to arrangements made with the Secretary of State, if such persons are residing permanently outside India. This pension is exempt from all taxation in India.\*

The Indian Military Widows and Orphans Fund, the Superior Services (India) Family Pension Fund, a Fund to be formed out of moneys contributed under the Indian Military Service Family Pension Regulations, and a Fund to be formed similarly under the Indian Civil Service Family Pension Rules, are to be vested in the Commissioners to be appointed under the authority of an Order in Council to be issued by His Majesty. This Order is also to provide for investment of the said Funds by the said Commissioners, for the remuneration of the Commissioners out of these Funds, and for the administration of these Funds in other respects by the Secretary of State. After the date specified in the Order, pensions payable under the rules shall be payable out of the proper Funds in the hands of the Commissioners. Such an Order is to provide that the balance in respect of these Funds in the hands of the Governor-General on the 31st of March after the passing of this Act, shall be transferred to the Commissioners before the passing of three years either all at one time or in instalments together with the prescribed interests. This period can be extended by His Majesty in Council. Before recommendation is made to His Majesty for the making of this Order, the Secretary of State is to consider any representations by any of the existing subscribers and beneficiaries. Moreover provision is to be made in this Order for the making of objections by the subscribers and beneficiaries to the vesting of any such Fund in the Commissioners. If such an objection is made in the proper way, the money representing the interest of the objector is not to be transferred to the Commissioners but is to be dealt with as part of the Federal revenues. The pension payable to or in respect

\* Sec. 272.

of such an objector shall be paid out of these revenues according to the rules to be made by the Secretary of State. Interest or dividends on these Funds vested in the Commissioners, as mentioned above, are exempt from income-tax in the United Kingdom. Estate duty cannot also be levied on them in Great Britain and in Northern Ireland, if the Parliament of that country so provides.\*

The Indian Military Funds Act, 1866, the East India Annuity Funds, 1874, and the Bombay Civil Funds Act, 1882, are kept in force, but the Secretary of State in Council in respect of these Acts mean the Secretary of State, and the revenues of India mean the revenues of the Federation.†

It is expressly provided‡ in the Act that all civil servants in India hold office during His Majesty's pleasure. The tenure of office of such persons is safeguarded by the provision that no person who holds any civil post under the Crown in India can be dismissed from the service of the Crown by any authority subordinate to that by which he was appointed. Before such a person is dismissed or reduced in rank, he must be given a reasonable opportunity of showing cause against the action proposed to be taken in respect of him, provided action is not taken against him on the ground of conduct which has led to his conviction on a criminal charge, or where the proper dismissing authority is satisfied that for some reasons, to be recorded in writing, it is not reasonably practicable to afford an opportunity of showing cause to the person concerned. Although a person holding a civil post holds office during His Majesty's pleasure, yet any contract under which a person, not being the member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if that post is abolished before the agreed period, or that person is required to vacate that post for a reason other than any misconduct on his part.

The Ruler or a subject of a Federated State is eligible to hold any civil office under the Crown in

Certain  
Funds Acts  
kept in  
force

Tenure of  
office of  
civil  
servants

Protection  
against  
reduction  
and dis-  
missal

Payment of  
Compensa-  
tion.

\* Sec. 273. † Sec. 274. ‡ Sec. 240.



Eligibility  
for office of  
persons who  
are not  
British  
subjects

India in the Federal sphere. Although generally speaking a person who is not a British subject cannot hold any civil office under the Crown in India, yet the Governor-General may declare that the Ruler or any subject of a specified Indian State being not a Federated State, or any native of a specified tribal area or territory adjacent to India is eligible to hold any specified office. The Governor can do a similar thing in respect of a civil office in Provincial sphere while the Secretary of State may do so in respect of services to which he makes appointments. No non-British subject can hold any office under the Crown in India except subject to the above-mentioned provisions, but the Governor-General and the Governor, in their respective spheres, can authorise the temporary appointments for any purpose of such person. These functions are to be discharged by the Governor-General or the Governor, as the case may be, by the exercise of their individual judgment.\* It is also provided that if an agreement is made for joint services and posts in respect of the Federation or the Provinces, a provision shall be made in it that the Governor-General or any Governor, or a Public Service Commission, shall exercise the functions of the Governor or the Provincial Public Service Commission if that service or post were a service or post in connection with the affairs of one Province only.†

Rules under  
the Act of  
1919 kept in  
force

It should be clearly pointed out that the rules‡ made under the Government of India Act, 1919, relating to the Civil Services are kept in force as far as they are consistent with the new Act, until some other provision is made.

Sex is no  
disqualifica-  
tion for civil  
service

It is expressly declared in the Act that sex§ is no disqualification for appointment to any civil post in India except that which may be specified by any general or special order made by the Secretary of State, the Governor-General or the Governor in their respective spheres.

Special res-  
ponsibility  
of Governor  
General and  
the Governor

Lastly the Act makes it perfectly clear that any provision in the Act requiring the Governor General or a Governor to exercise his individual judgment with respect to any matter regarding the Services does not derogate from their special responsibility for the protection of the legitimate interests of the Services.|| This means that the Governor-General and the Governors in their respective spheres can interfere

\* Sec. 262. † Sec. 263. ‡ Sec. 276. § Sec. 275, || Sec. 277 (3)



regarding matters in respect of Civil Services whenever and wherever they think that the legitimate rights and interests of the Services are affected. This is, thus, a general overriding safeguard.

**General Remarks.**—Thus the rights and privileges of the Civil Services are amply safe-guarded. This preserves their charm for Britishers as well as Indians. This also gives them elements of stability and security which are absolutely essential, if the administration of the country is to go on smoothly.

Safeguards  
give elements  
of stability  
and security

This, however, does not satisfy the Indian point of view. Nationalist opinion in this country considers the Services as pampered, and desires the reduction of their rights and interests in respect of emoluments, allowances, etc., both from the economic point of view and the political point of view. From the economic point of view, it is urged that India cannot afford to pay such high salaries—the Indian Civil Service is the highest paid in the world, in view of the dire poverty of the masses and the urgent need of money for other nation-building activities. From the political point of view it is desired to make the Services national from the point of view of the outlook, control and recruitment. Under the new Constitution, this cannot be done except perhaps to a certain extent, and that too with the concurrence of the Governor-General and the Governors.

Indian  
opinion  
dissatisfied

There is, however, one thing to be noted with gratification. Before the commencement of the new Constitution, there was mutual distrust. The Services were not sure if the new conditions of service would be congenial for them, while the Indian politicians were doubtful whether the Services would willingly offer their active co-operation for carrying out new policies, and whether they would be willing to change their outlook. During the brief period the Provincial Autonomy has been at work, these fears have been falsified and mutual distrust has vanished to a great extent. While the Indian politicians have shown greater sense of responsibility than was expected, and have taken a keen interest in protecting the honour and prestige of their administrative officers, the civil servants have adapted themselves to the new conditions with commendable readiness. It is only in very few cases, four or five, that some of the civil servants have found it difficult to serve under the new conditions. Thus there has been no clogging of the administrative

Fears  
Falsified

machine, nor is there any lowering down of the standard of administrative efficiency.

Need for  
change

Yet, as matters stand legally, there is an urgent need of change both in the Provincial and the Federal spheres. The pays and emoluments of the Services must be related to the economic condition of the country, though opinions might differ regarding the maximum salary of Rs. 500 per mensem fixed by the Indian National Congress. In the Provincial sphere this must be done immediately. And in certain Provinces, notably Madras, steps towards this direction have already been taken. As for the All India Services,

"with rare exceptions, the Governor-General is empowered in all these matters relating to the superior services, **to act in his discretion** i.e., without reference to the Ministers. The bulk of the salaries, allowances, pensions, etc., *are charged upon the revenues of the Federation, i.e.,* utterly outside the vote or discussion of the Indian Legislature. By this arrangement the Governor-General is not only made the most important single cog in the administrative system of India; his Ministers' power and importance, their authority and influence are diminished *pro tanto*."\*

The vesting of the power of control, supervision, hearing of appeals and grant of redress and compensation, etc., ultimately with the Governor-General or the Secretary of State, and laying down of the general rule that the conditions of service of civil servants cannot be changed so as to give them less advantageous terms place the demigods of the Indian Services beyond the control and the reforming capacity of their real masters—the Indian masses and their representatives.

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\* Shah K. T. Federal Structure p. 277.

## CHAPTER XVII

### THE HOME GOVERNMENT OF INDIA

#### The Secretary of State for India and His Advisers

The Secretary of State for India in Council ; Advisers to Secretary of State ; Consequential Changes ; Contributions from the Revenues of the Federation ; Expenses of India Office ; The Secretary of State for India—Powers and Functions ; The High Commissioner for India ; The Auditor of Indian Home Accounts.

**The Secretary of State for India in Council.**—India is more or less a dependency of the British Crown and thus the authority of the King in Parliament is supreme over the Government of India. This authority has been exercised through, what has been called, the Home Government, consisting of highest executive authorities in England under whose control, guidance and supervision, the Central and the Provincial Governments in India have so far functioned. Up to 1784 the Court of Proprietors and the Court of Directors constituted the Home Government. The Pitt's India Act created the Board of Control, which through its President continued to exercise control over the Government of India on behalf of His Majesty's Government till the Mutiny. After the Mutiny the Government of India was transferred to the Crown ; the office of the President of the Board of Control was abolished and in his place, the Secretary of State for India and the Council of India were created. Henceforward the Secretary of State for India in Council was to superintend, direct and control all acts, operations and concerns which relate to the government, or the revenues of India. The Governor-General and through him the Provincial Governments were required to pay due obedience to his orders.

According to the J. P. C., the Secretary of State in Council was a body corporate with singular powers. The Council consisted of the Secretary of State and not less than eight and not more than twelve members of whom at least one-half were required to have served or resided in India for at least ten years. The

The Home  
Government  
of India

The Secretary of State  
for India in  
Council

Superintended  
direct & control all  
acts which relate to  
the govt. of India  
or revenues of India

Prof.

The functions of the  
Secretary of  
State for  
India in  
Council

functions performed by the Secretary of State in Council included the disposal of real or personal estate vested in the Crown, raising of money by way of mortgage, making, varying and discharging contracts, to sue and be sued in cases where the Government of India or any Local Government or any official belonging to them was a party, conducting the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. Generally the decisions in the Council were taken by a majority vote, though the Secretary of State could over-rule the Council except in certain matters which included grants or appropriations of any part of the revenues of India, the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise, the making of contracts, including instruments of contracts of civil offices in India, the application to the Government of India and the Local Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads, the passing of any order affecting the salaries of members of the Governor-General's Council and the making of rules regulating various matters connected with the Indian Public Services. This condition fettered the powers of the Secretary of State to dispose of the revenues of India without the consent of the majority of the Council. The J. P. C. wrote :

Need for  
Change

J. P. C.'s  
Views

"We cannot doubt that under a system of responsible government in India, the Secretary of State in Council could not continue on the present basis. It will no longer be necessary, with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters ; nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of the Indian Ministers. But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department."\*

Abolition of  
the Council  
of India

**Advisers to the Secretary of State.**—Thus in accordance with the recommendations of the J. P. C. the Constitution Act abolishes the Council of India as it† existed before April 1st, 1937. In its place provision is made for a certain number of *Advisers* to the Secretary of State. These Advisers, not being less than three nor more than six in number, as the

\* Para 385. † Sec. 278.

Secretary of State may determine from time to time are to be appointed by the Secretary of State for the purpose of advising him on any matter relating to India on which he may seek their advice. One-half of these Advisers are to be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before their appointment as Advisers. They are to hold office for five years and are not eligible for re-appointment, though they can resign their office to the Secretary of State and the latter can remove any of them from office on ground of infirmity of mind and body. The members of the Council of India as it existed before the introduction of the Provincial Part of the Constitution Act could also be appointed Advisers to the Secretary of State to hold office for a period less than five years as the Secretary of State may think fit.

The Advisers  
to the  
Secretary of  
State

Conditions  
of Appointment  
and  
Service

The Advisers of the Secretary of State cannot become members of Parliament. Explaining this point, it was stated in the Parliamentary Debates :

Advisers cannot  
become  
Members of  
Parliament

" There has always been the condition upon the Secretary of State's Council that members of it should not become members of either House. I think that is a salutary provision. I think that without it there might be division of responsibility. The only member of the Council responsible to Parliament is the Secretary of State. As soon as you have upon this Council members of one or other House, those members might go to one or other House and make speeches or give their votes contrary to the policy of the Secretary of State. That, from the constitutional point of view would be an untenable position."\*

The Advisers are to receive a salary of £1350 a year, while those who were domiciled in India at the date of their appointment are to receive a subsistence allowance of six hundred pounds a year in addition to the salary.

Salary and  
Allowance

It is left to the discretion of the Secretary of State whether or not to consult his Advisers in any matter or whether to consult them collectively or with one or more of them individually and whether or not to act in accordance with any advice given to him by them. It is further provided that the Secretary of State shall be deemed to have obtained the concurrence of his Advisers if at their meeting he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity as

Functions of  
the Advisers

\* Ia. Deb. Vol. 300, Col. 100.

may be prescribed by rules of business made by the Secretary of State with the concurrence of at least one half of the Advisers present at the meeting, has been given to those Advisers and none of them has asked for a meeting for the discussion of the matter.

Indian  
Opinion  
regarding the  
Council and  
the Advisers

Thus it is clear that the Council of India is abolished and its place is taken up by a number of Advisers. Indian opinion had always been against the continuation of the Council of India on ground of expense and also because the Council has generally served as a convenient place for providing for retired public servants from the Indian Service who on account of their conservative tendencies and prejudices acquired during the period of the service in India, did not acquire the reputation of being sympathetically disposed towards Indian political aspirations. Its abolition, however, cannot please progressive Indian opinion because the Advisers who are to take the place of the Council will be almost as costly and will represent the same kind of opinion. There is no denying the fact that the Advisers enjoy less powers than the Councillors, as they are intended only to advise while the Councillors were entrusted with certain statutory duties in which the Secretary of State could not act except with their advice or at least with the advice of the majority of them. But from the Indian point of view it does not make any great difference because it means simply unnecessary expense. As a matter of fact Sir Tej Bahadur Sapru pointed out in his Memorandum submitted to the Joint Committee that for the limited purposes for which their advice would be sought, the number of the Advisers was too great.

Sir Tej  
Bahadur  
Sapru's View

Existing  
Accounts of  
the Secretary of State  
in Council  
with the  
Bank of  
England

**Consequential Changes.**—The Act provides for certain changes necessitated by changes in the position of the Secretary of State and his Council. It is provided that all stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England before April 1st, 1937, be transferred to the credit of the Secretary of State. And any order and instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by him for the purpose is to be considered a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith. Any directions, authority or power of attorney, given

or executed by or on behalf of the Secretary of State in Council before the introduction of Provincial Autonomy were to continue in force until countermanded or revoked by the Secretary of State.\*

All members of the permanent establishment of the Secretary of State in Council before April 1st, 1937, were to be transferred under the Act to the Department of the Secretary of State as permanent Civil Servants of the State. They are placed on the same footing as the members of Home Civil Service to all intents and purposes. It is provided that the provisions of the Superannuation Acts 1834-1935, along with any orders, rules and regulations made thereunder, are made applicable to them. It is, however, laid down that the Superannuation Act of 1909 and Section 4 of the Superannuation Act of 1935 do not have application to them unless they would have applied in relation to any of them if the Constitution Act had not been passed. His Majesty may, however, direct by Order in Council that the above-mentioned rules, Acts and Orders may be applied to these persons with certain modifications which, however, cannot deal with these persons less favourably than if the Act had not been passed.

Transfer of  
existing  
personnel

Those officers and servants, who were not on the permanent establishment of the Secretary of State in Council before the commencement of the Provincial Part of the Act but were in its employ in the United Kingdom, were also to be transferred to the new department of the Secretary of State. They were to be treated as if they have been employed by the Secretary of State for the purposes of the Superannuation Acts, 1834-1935. It is also provided that if the conditions of service of any person include a condition making him eligible for a retiring allowance for meritorious services, the British Treasury may, if they think fit, grant to him such an allowance on his retirement. The Treasury and the Secretary of State are also authorized to commute for a capital sum any superannuation compensation or retiring allowance, to be paid respectively from moneys provided by Parliament and out of the revenues of the Federation of India. This commutation shall be made in accordance with the conditions laid down by His Majesty

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\* Sec. 279.

in Council, but these conditions cannot be more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.\*

**Contributions from the Revenues of the Federation. —**

It is provided that sums of money payable as superannuation, compensation, retiring or additional allowances or gratuities in respect of officers and servants transferred to the Department of the Secretary of State, and which may be determined by His Majesty in Council so as to represent the proportion for the service before the date of transfer shall be paid out of the revenues of the Federation. In fixing the sum no account shall be taken of any service before the date of transfer regarding which allowance or gratuity was payable out of moneys provided by the British Parliament if this Act had not been passed. If any person, being an officer or servant, on the establishment of the Secretary of State in Council, or of the High Commissioner for India or being the Auditor of the Accounts of the Secretary of State in Council or a member of the staff of the latter, and who has been transferred to the newly created Department of the Secretary of State, loses his employment on account of the abolition of his office or by any re-organization of the Department or of his office resulting from the operation of this Act, he shall be awarded by the Secretary of State any just compensation or any additional allowance or gratuity out of the revenues of the Federation of India. All the payments shall be charged on the revenues of the Federation. Any sums payable as pensions in respect of service before the commencement of the Provincial Part of the Act shall be paid from the revenues of the Federation of India and shall be considered as a charged expenditure. Lastly any sums which were paid before the passing of the Act from the revenues of India to or in respect of persons subscribing to the Regular Widows' Fund, the Elder Widows' Fund, or the India Office Provident Fund are to be paid from and charged on the revenues of the Federation of India.†

India Office  
Provident  
Funds

**Expenses of India Office.**—Regarding the expenses of India Office, the J.P.C. observed :

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\* Sec. 281. † Secs. 282, 283, 284.



"We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant in aid of £150,000 is made by the Treasury. This is a matter which ought, we think, to be considered in connection with further changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service estimates of the United Kingdom, but that Indian revenues should contribute a grant-in-aid, in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Governments in India."

J.P.C.'s  
Recommendation

The Act, therefore, lays down that the salary of the Secretary of State and the expenses of his Department including the salaries and remunerations of the staff, shall be paid out of money provided by the British Parliament. Subject to the provisions mentioned above, the Secretary of State is authorised to appoint officers and servants, he may think fit, with the consent of the British Treasury as to numbers. These persons shall receive salaries or remuneration as may be determined by the Treasury. The Federation of India shall pay from its revenues to the British Exchequer such sums as may from time to time be agreed between the Governor-General of India and the British Treasury so as to cover the expenses of the Department of the Secretary of State in respect of functions performed on behalf of the Federation according to the agreement between the Secretary of State and the Governor-General.† Thus under these provisions the India Office has become a Treasury Office. The position was thus made clear in Parliament:—

India Office  
Expenses to  
be paid by  
the British  
Exchequer

Grant-in-aid  
to be made  
by the  
Federation  
of India

"Its expenses will come from funds here and the Government of India will pay towards the cost of the India Office what may be termed agency expenses involved in any duty which the India Office has carried out either for the Federal Government or for the Provincial Governments. The proposal merely changes round the present plan. The present plan is that the expenses of India Office are paid out of the Indian Revenues but the Treasury makes a contribution in the form of a grant-in-aid from British Revenues. In future the Treasury will provide for the India Office, the Government of India making a contribution in respect of agency functions performed by the India Office for the Governments in India. In actual practice there will not be a great difference in the expenditure one way or the other."‡

This is certainly the correct constitutional position as the Secretary of State for India is a member of the British Cabinet, responsible to Parliament and not a servant of the Federation of India. But in actual practice this will not make any great difference to

Correct  
Constitutional  
Position

\* Para. 389. † Sec. 280. ‡ Parliamentary Debates, Vol. 300. Col. 1010.

India from the financial point of view, as India shall have to make a similar contribution towards the expenses of the India Office in lieu of the agency functions performed on her behalf; as she was making before the changes introduced by this Act.

Legal Status  
of the Secretary of State  
for India

An important change

Powers of  
the Secretary  
of State for  
India

Curtailment

**The Secretary of State for India – Powers and Functions.** – Under the Government of India Act, 1919 “the Secretary of State was in the foreground and the Crown was in the background.” This was in contravention of the practice of the Dominions which derive their executive and legislative power directly from the Crown, there being no place for the Secretary of State for the Colonies in the constitutional law of the Dominions. On the other hand the Secretary of State for India had a definite legal status under the Act of 1919. This status he continues to enjoy under the Act of 1935, but his position *vis-a-vis* the Crown has been reversed at least in theory. The territories in India and the executive authority of India are now vested in the latter and not the Secretary of State as before. This authority of the Crown, however, is to be exercised through and on the advice of the Secretary of State for India who is a member of the British Cabinet and thus shares his responsibility with other members of the British Government. “This is the fundamental change made in the legal position of the Secretary of State, though in substance his control remains unaffected.”\* As a result of this change the Secretary of State has been placed in his true position *vis-a-vis* the Crown and at least in this respect the constitutional law of India has been brought in line to a certain extent with the constitutional law of the Dominions.

In actual practice, however, the Secretary of State for India still continues to enjoy vast powers under the Act of 1935. As the doctrine of the British Parliament as Trustee of the teeming millions of India and responsible for their welfare and good government still holds the field, the Secretary of State for India who is the medium and the vehicle through which this responsibility works, cannot but occupy a very important position. The present Act guarantees him that, but as an attempt has been made in the Act to transfer a measure of responsibility for the government of the country to the elected representatives of the people, particularly in the Provinces, and to a lesser degree at the Centre,

\* Joshi, G. N. : The New Constitution of India, p. 377.

the authority and powers of the Secretary of State had of necessity to be curtailed to that extent. Thus to the extent the government of India is made responsible to the Indians in India, the powers of the Secretary of State for India have been curtailed. A sort of reality has been given to this change by the Secretary of State for India refusing to accept responsibility for certain happenings in the Provinces when he was asked certain questions in the Parliament. It was made clear on his behalf that the members of the Parliament should understand that the Parliament has vested the Provincial Governments with responsibility in certain spheres and that the Executive of the Provinces were responsible to their Legislatures in those spheres and not to the British Parliament.

imp.

Yet the Secretary of State enjoys very substantial power under the Act of 1935. These powers and functions are manifold and are scattered in various Sections of the Act. The most important of his powers is his power of supervision, direction, and control over the Governor-General, and the Governors of the Provinces through the agency of the Governor-General, in the due discharge of their functions reserved to their discretion or subject to the exercise of their individual judgment. It is laid down in the Act:\*

Powers of supervision, direction and control over the reserved field—

"In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him, by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provision of this section."

Before giving any such directions the Secretary of State, however, is to—

"satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty."

Regarding the Provincial Governors, it is provided in the Act that in so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Governor General *in his discretion*, but the validity of anything done by a Governor shall not be called in question on the ground

Position in respect of the Provincial Governors

\* Sec. 14 (1 & 2).

that it was done otherwise than in accordance with the provisions of this Section. Like the Secretary of State in the federal sphere, the Governor-General before giving any such directions, shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty. It shall be noticed that in the latter case the instructions by the Governor-General are to be issued *at his discretion*. Here he is himself subject to the supervision and control of the Secretary of State. The last mentioned, therefore, indirectly controls the Provincial Governors in this sphere.

Importance  
of these  
powers

The importance of these powers will be realized when an idea is formed of the extent of the sphere reserved to the discretion or subject to the individual judgment of the Executive Heads—Provincial and Federal, in India. In the case of the federal sphere this brings the key Departments of Defence, External Relations, government of Tribal or Excluded Areas, and the Ecclesiastical affairs along with their financial implications, the vast field covered by the Special Responsibilities of the Governor-General, appointment, dismissal, and distribution of work among the Federal Ministers, supervision over Provincial Governors, affairs of the Indian ruling chiefs outside the federal sphere, all questions regarding paramountcy, and various other extra-ordinary powers regarding finance, legislation and the exercise of executive authority at his discretion or by the exercise of his individual judgment by the Governor-General. In the provincial sphere the vast area covered by the Special Responsibilities of the Governors and other functions subject to the individual judgment of the latter are subject to the indirect control of the Secretary of State.

✓ The Secretary of State's powers regarding recruitment, Services and Posts, Orders in Council, legislation, borrowing pensions, etc.

Besides, the Secretary of State possesses real powers regarding recruitment and the protection of the rights and privileges of certain services and posts, the issue of Orders in Council by His Majesty in Council, the exercise of His Majesty's powers to assent to, to withhold assent, or to disallow the Acts, passed by the Legislatures in India, financial powers regarding the borrowing in the United Kingdom on behalf of the Federal Government and the Provincial

Governments and the payment of certain pensions, etc., in Britain on behalf of the Government of India, the powers regarding contracts and other liabilities, audit of accounts including the appointment of the Auditor-General, powers regarding inter-provincial disputes in respect of water supplies, the exercise of control regarding the putting in force of the Emergency Powers by the Executive Heads, such as the issuing of Ordinances and the enactment of the Governor-General's and the Governor's Acts, the powers in respect of the special powers vested with the Governor-General and the Governors regarding the breakdown of the Constitution, and the power of granting leave to the Governor-General or the Governors during their terms of office.

This vast array of powers makes the Secretary of State the dominant authority of the Indian Constitution. Professor K. T. Shah writes :

Dominant  
Authority

" His powers may not be so imposing in appearance as those of the Governor-General or the Provincial Governors. But these are merely his creatures, obedient to every nod from the Jupiter of White Hall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy ; to the protection of British vested interests ; to the safeguarding of Britain's imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislature, and even the appointments, payment or superannuation of certain officers in the various Indian services or Governments. He has, in fact, all the power and authority in the governance of India, with little or none of its responsibility."\*

It is no use denying that from the point of view of Indian nationalism such a vast array of powers vested with the Secretary of State is not justified. Indian nationalist opinion takes it as an affront to their national self-respect and looks upon this as a mark of their political subservience. On the other hand, it may be noted, that under the scheme of the Act, some of these powers had to be vested with the Secretary of State. But if these powers are exercised rigidly, there is bound to be dissatisfaction in India which may lead to constitutional deadlocks and political stalemates. But if these powers are exercised with restraint and in the spirit that the Executive Authorities in India are to be made responsible to the Legislatures in India at least in actual practice, most of these powers will fall in disuse and the trouble will be avoided.

Nationalist  
Opinion  
↓

Convention necessary

\* Shah, K. T. : Federal Structure in India, p. 386.

Rul  
aid  
Par

Working  
agreement  
in India

In this connection reference may be made to the understanding arrived at between the Congress Ministers and the Provincial Governors regarding the exercise of the Special Powers by the latter. To the extent and as long as this understanding is respected by the Governors, of course under the general control of and with the concurrence of the Governor General and through him of the Secretary of State, the direct powers of supervision and control of the Secretary of State over the Provincial Governors are kept in abeyance. If this state of affairs lasts for a long time, they may fall entirely in disuse, and it may not be possible to revive them later on. It is hoped that a similar understanding as that in the Provinces will be arrived at between the Governor-General and his Ministers, when the Federation comes into being. If this hope is fulfilled, similar results will be achieved in the federal sphere. In that case there will be a real transfer of power to the representatives of the people of India and corresponding curtailment of the powers of the Secretary of State for India.

**The High Commissioner for India.**—Another officer who works on behalf of the Government of India in Britain is the High Commissioner for India. The J. P. C. wrote :

"There has been a High Commissioner for India in London since 1920. Orders in Council framed under S. 29-A of the Government of India Act, make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject."\*

Appointment

Functions

Thus the Act† lays down that there shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed by the Governor-General, exercising his individual judgment. He shall perform on behalf of the Federation such functions in connection with the business of the Federation and, in particular, in relation to the making of contracts, as the Governor-General may from time to time direct. He may also, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or a Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

\* Para. 404. † Sec. 302.

Regarding the duties of this officer, Sir Samuel Hoare stated in the Parliament :

" The High Commissioner will have two kinds of duties, one  
1. for the Federal Government and the Provincial Governments in  
India, and the other for the Governor-General acting in his discre-  
tion for the reserved departments and for the sphere of Government  
2 that does not come within the Federal Government of India. As the  
High Commissioner will have to act in these two capacities it was  
thought that the proper method of action was that it should be the  
individual judgment of the Governor-General, namely, that the  
initiative in suggesting names will be with the Ministers, but that  
the final word should be with the Governor-General."

Duties

It should be noted that no striking change has been made in the position, status, and functions of the High Commissioner for India. Although apparently he occupies a similar position as that of the High Commissioners for the Dominions, yet in actual practice there is a great difference between his status and position and those of the Dominion High Commissioners because the latter represent their Governments in London and act as the channel of communication between the Imperial Government and the Dominion Governments. Of course this difference is due to the inferior constitutional status of India in the British Commonwealth of Nations.

No c ge

Difference  
between the  
High Com-  
missioner for  
India and  
the Domi-  
nion High  
Commis-  
sioners

**The Auditor of Indian Home Accounts.**—Another important officer who shall work on behalf of the Government of India in London shall be the Auditor of Indian Home Accounts. His powers and functions have already been described in the Chapter on Federal Finance.

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\* Parl. Deb. Vol. 300, Col. 1100.



## CHAPTER XVIII

### MISCELLANEOUS PROVISIONS AND CONSTITUENT POWERS

The Crown and the Indian States; Functions of the Political Department; Franchise and Elections; Existing Law of India; Death Sentences; Restrictions on Internal Trade; the Sheriff of Calcutta; the First Elections to the Legislature; Orders in Council; Facilitating Transition; the Amendment of the Constitution.

Rights and  
Obligations  
of the Crown  
in its relations  
with Indian  
States.

**The Crown and the Indian States.**—Nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State. This is, however, subject to the provisions of the Instrument of Accession in the case of a Federated State. This means that this Act can operate in respect of a State only if it joins the Federation and that too in accordance with the provisions of the Instrument of Accession of that State. In the case of non-federating States, the Act does not touch the rights and obligations of the Crown in respect of them.\*

Use of His  
Majesty's  
forces in con-  
nection with  
the discharge  
of the func-  
tions of the  
Crown in its  
relations with  
the Indian  
States.

It is provided† that if His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General, exercising the executive authority of the Federation, to cause the necessary forces to be so employed. The net additional expense incurred on account of this shall be considered to be expenses of His Majesty incurred in discharging the functions of the Crown in its relations with the Indian States. The Governor-General is enjoined to act in his discretion in carrying out these provisions.

**The Functions of the Political Department.**—Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States and the Governor of any Province for the discharge by the Governor and the Provincial Officers of powers and duties in connection with the exercise of the functions of the Crown in its relations with the Indian States.‡

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\* Sec. 285. † Sec. 286. ‡ Sec. 287.



**Franchise and Elections.**—His Majesty in Council is empowered\* to make provisions with respect to the following matters or any of them in so far as no provision has been made with respect to them in the Act:—

(a) the delimitation of territorial constituencies for the purpose of elections under this Act ;

(b) the qualifications of the voters and the preparation of electoral rolls ;

(c) the qualifications for members of a Legislature ;

(d) the filling of casual vacancies in a Legislature ;

(e) the conduct of elections under this Act and the methods of voting at these elections ;

(f) the expenses of candidates at such elections ;

(g) corrupt practices and other offences at such elections.

(h) the decision of disputes in connection with such elections ; and

(i) matters connected with any of these matters.

**Existing Law of India.**—Although the Government of India Act, 1919, is repealed, yet all the law in force in British India immediately before April 1st, 1937, continues in force in British India until altered, repealed or amended by a competent authority. † This is, however, subject to the other provisions of the Constitution Act. His Majesty may by Order in Council provide after the passing of this Act that from a specified date any law in force in British India shall have effect subject to necessary adaptation and modifications, which may be deemed necessary for bringing that law in harmony with the provisions of this Act and specially with those provisions which reconstitute governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces. No such law, however, can be made applicable to any Federated State by an Order in Council made under this Section. The word "law," as used above, does not include an Act of Parliament, but it includes any ordinance, order, bye-law, rule or regulation having the force of law in British India.‡

To remain  
in force

Adaptation  
of existing  
Indian Law

\*Sec. 291 ÷ Sec. 292, † Sec. 293.

**Death Sentences.**—A special provision\* has been inserted in the Act in respect of death sentences. In the case of a person sentenced to death in a Province, the Governor-General in his discretion is vested with all the powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council before April 1, 1937. With this exception, no authority in India outside a Province has any power to suspend, remit or commute the sentence of any person convicted in the Province. This, however, does not affect any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court martial. The right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites, or remissions of punishments is not touched by anything in this Act.

Saving in  
respect of  
court martial

**Restrictions on Internal Trade.**—No Provincial Legislature or Government has the power† to pass any law or to take any executive action prohibiting or restricting the import or export from the Province of any kind of goods. They cannot impose any tax, cess, toll, or duty which has the effect of discriminating in favour of the goods produced in the Province, or which in the case of goods produced outside the Province, has the effect of discriminating between goods manufactured in one locality as against similar goods produced in another locality. Any law, which is passed contrary to this provision, shall be invalid to the extent of the contravention.

Not Allowed

**The Sheriff of Calcutta.**—There is a special provision‡ in the Act in respect of the Sheriff of Calcutta. He is to be appointed annually by the Governor of Bengal from a panel of three persons to be nominated by the Calcutta High Court at the time of each vacancy. He shall hold office during the Governor's pleasure and shall receive remuneration determined by the Governor. The Governor shall exercise his individual judgment in exercising his powers regarding the appointment and dismissal of the Sheriff and the determination of his remuneration.

Office during  
the  
Governor's  
pleasure

**The First Elections to the Legislatures.**—It is provided§ that for the purposes of the first elections to the Federal Legislature and the Provincial Legislatures,

\*Sec. 295. †Sec. 297. ‡Sec. 303. §Sec. 307.

no person shall be subject to any disqualification by reasons only of the fact that he holds any office of profit as a non-official member of the Governor-General's or the Governor's Executive Council, or as a Provincial Minister, or that he holds an office which is not a whole-time office remunerated either by salary or by fees.

Removal of  
Disqualifica-  
tions

**Orders in Council.**—Any power conferred by this Act on His Majesty in Council can be exercised only by Order in Council.\* A prescribed procedure is to be followed for making any such Order. The Secretary of State is to lay before Parliament the draft of any proposed Order. No further proceedings shall be taken in relation to that Order except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the same form or with certain amendments. This is subject to the provision that if at any time when the Parliament is dissolved or prorogued or is adjourned for more than fourteen days, and the Secretary of State considers that on account of urgency an Order in Council should be made at once, the draft of the Order may not be laid before Parliament. Such an Order, however, shall cease to have effect at the expiration of twenty-eight days after the first meeting of the House of Commons after the making of the Order unless in the meanwhile the Order is approved by resolutions passed by both Houses of Parliament. Subject to any provision of this Act, His Majesty in Council, following the same procedure as described above, may by a subsequent Order revoke or vary any Order previously made by him.

Procedure

Powers of  
the Secretary  
of State at  
a time of  
urgency

Varying an  
Order

The provisions of this Section do not apply to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning proceedings against an ex-Governor-General, or an ex-Representative of His Majesty for the exercise of the functions of the Crown in its relations with Indian States, or an ex-Provincial Governor, or an ex-Secretary of State.)

Savings

**Facilitating Transition**—A special provision† is made for facilitating the transition from the provisions of Part XIII of this Act viz., the transitional provisions, to the provisions of the Part II of this Act viz., the provision in respect of the establishment of the Federation. For this purpose His Majesty

\*Sec. 309. †Sec. 310.

Adaptations  
and Modifi-  
cations

Making  
money  
available

Time Limit

may by Order in Council direct that the Act of 1935 and any provisions of the Government of India Act, 1919 still in force shall have effect subject to specified modifications and adaptations during a specified limited period. He may make during the specified limited period the necessary temporary provisions ensuring that during the period of transition and the period following it, sufficient revenues are available to all governments in India and Burma to enable the business of those governments to be carried on. He may make such other temporary provisions for the purpose of removing any such difficulties as mentioned above as may be specified in the Order. No Order in Council in relation to the transition as described above shall be made under this Section after the expiration of six months after the establishment of the Federation, and no other Order in Council shall be made under this Section after the expiration of six months after April 1st 1937.

Supremacy  
of the  
British  
Parliament

*In assembly convened  
to frame the constitution*

Amend-  
ments  
through  
Orders in  
Council

*Int.* **The Amendment of the Constitution.**—The new Constitution of India seems to have the impress of finality. No provision has been made for its change from within. Under the Act of 1935 the Indian Legislatures—the Federal as well as the Provincial, are subordinate law-making bodies subject to the supreme legislative power of the British Parliament. Whatever powers these Legislatures enjoy, they are conferred on them by a grant by the British Parliament under the Act. The powers of a constituent assembly are not conferred on the Legislatures in India, which, therefore, cannot alter or amend the Constitution except as regards extension of the jurisdiction of the Federal Court.\* The power of altering or amending this Constitution vests in the British Parliament, though in respect of a number of minor matters amendments are permitted by Orders in Council, issued in the prescribed manner with the assent of the British Parliament after resolutions are passed to the effect by the Federal or the Provincial Legislatures after the expiration of ten years from the establishment of the Federation or the inauguration of Provincial Autonomy as the case may be.

The matters in respect of which amendments may be made are as under:—

(a) the provisions relating to the size or composition of the Chambers of the Federal Legislature, or the method of choosing or the qualifications of members of that Legislature. The proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, however, cannot be varied, nor can the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States in the Council of State or the Federal Assembly be varied; (b) the provisions in respect of the number of Chambers in a Provincial Legislature, or their size or composition, the method of choosing or the qualifications of members of such a Legislature; (c) providing that in the case of women literacy shall be substituted for any higher educational standard as a qualification for the exercise of franchise, or providing that qualified women shall be entered in electoral rolls without any application; and (d) the provisions relating to the qualifications of voters.

Matters in respect of which amendments are permissible

Although these matters are of minor importance, yet the procedure laid down in the Act for carrying through the amendments in respect of them is far from simple. In the first instance, the Federal Legislature or a Provincial Legislature, on motions moved by a Minister on behalf of the Government, should pass a resolution commending the required amendment of this Act or of an Order in Council made under it. Then these Legislatures, on motions moved in the same way as mentioned above, should present to the Governor-General or the Governor, as the case may be, an address for submission to His Majesty praying that the resolution may be communicated to Parliament. After this, the Secretary of State for India, within six months after the resolution has been so communicated shall cause to be laid before Parliament a statement of the proposed action.

Procedure

When any such resolution and address, as mentioned above, are forwarded to the Secretary of State, the Governor-General or the Governor, as the case may be, shall send with them a statement of his opinion on the proposed amendment and particularly the effect it would have on the interests of any minority, and also a report of the views of the minority affected by the proposal, and whether a majority of

Safeguard for the interests of the Minorities

the representatives of that minority in the Federal, or the Provincial Legislature, as the case may be, support the proposal. This statement and report shall be laid before Parliament by the Secretary of State. In discharging these functions, the Governor-General or the Governor, as the case may be, is to act in his discretion.

Time limit

Power of  
His Majesty

Saving in  
respect of  
the States

There is also a time limit for these amendments. Except in the case of a resolution of the Provincial Legislature in respect of an amendment of the kind mentioned in (c) above *viz.*, regarding the franchise qualifications for women, no amendment can be moved before the expiration of ten years after the inauguration of the Provincial Autonomy in the case of a resolution of a Provincial Legislature and ten years after the establishment of the Federation in the case of a resolution passed by the Federal Legislature. His Majesty in Council, however, can at any time, whether any condition above referred to has been satisfied or not, make any amendment in respect of the matters mentioned above. This is subject to the provision that if no address, as mentioned above, has been submitted to His Majesty, the Secretary of State before laying the draft of the proposed Order in Council before Parliament shall ascertain the views of the Governments and the Legislatures in India which would be affected by the proposed amendment, and also the views of any minority likely to be affected, and whether the majority of the representatives of the minority concerned in the Federal, or as the case may be, in the Provincial Legislature, support the proposal. This may not be done, if the Secretary of State is of opinion that the proposed amendment is of a minor or drafting nature. But the provisions of Part II of the First Schedule to this Act dealing with the representation of the States in the Federal Legislature cannot be amended without the consent of the Ruler of any State that is affected by it.\*

On a careful examination of this provision, it will be noticed that matters in respect of which amendment is made possible are of minor importance except perhaps the membership of the Legislatures. The latter was determined by the Communal Award

\*Sec. 308.

which had a mixed reception in India and is still resented by an important section of public opinion in this country. No change, however, can be made in this matter before the expiry of ten years from the inauguration of the Provincial Autonomy in the case of the Provinces, and before the expiry of ten years from the establishment of the Federation in the case of the Federation. The pocedure laid down in respect of amendments regarding these matters is very elaborate and cannot be easily adopted.

No change  
in the  
Communal  
Award  
before the  
expiry of ten  
years

## CHAPTER XIX

### THE TRANSITIONAL PROVISIONS

The Transitional Period ; the Executive Government ; Control of the Secretary of State ; Sterling Loans ; the Legislature ; Provisions as to certain Federal Authorities ; Rights and Liabilities of the Government of India ; Repeal ; Commencement of the Act.

Act.  
1. Federal part -  
2. Provincial part.

Provision  
for the  
transitional  
period

**The Transitional Period.**—The Government of India Act, 1935, contains a scheme of Provincial Autonomy as well as a scheme for the Federation of India. It was clearly understood that although both these schemes were to go together in one Act, yet they were not to be enforced at the same time. Provincial Autonomy, *viz.*, the changes in the Provinces, was to be introduced earlier, and then the Federation was to follow. Thus the Provincial Autonomy has been introduced by the commencement of the Part III of the Act on April 1st, 1937. The Federation of India is still hanging fire. Thus there is a transitional period after which the whole Act is to come in force. The Act itself makes provisions for this transitional period.

Executive  
authority to  
be exercised  
by the  
Governor-  
General in  
Council

The extent  
of the execu-  
tive authority

**The Executive Government.**—During this transitional period, the executive authority, as is mentioned below, is to be exercised on behalf of His Majesty by the Governor-General in Council directly or through subordinate officers. The Indian Legislature, however, is not forbidden from conferring functions upon subordinate authorities. This provision does not transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or any local or other authority.\* Subject to the provisions of this Act which are in force, the executive authority mentioned above includes matters with respect to which the Indian Legislature has power to make laws, the raising in British India on behalf of His Majesty of naval, military or air forces and the governance of His Majesty's forces borne on the Indian establishment, and the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in rela-

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\* Sec. 313 (1).



tion to the Tribal Areas. The said authority, however, does not extend in any Province to matters regarding which the Provincial Legislatures has power to make laws, except as is clearly provided in the provisions of this Act for the time being in force, and to the enlistment or enrolment in any force raised in British India of any person who is neither a subject of His Majesty, nor a native of India, nor of territories adjacent to India. It is also provided that commissions in such forces shall be granted by His Majesty, except in so far as he may be pleased to delegate his power under the provisions of this Act or otherwise.\*

Grant of  
Commissions  
in His  
Majesty's  
Forces

It is clearly stated that references in those provisions of the Act, which have been put into force, to the Governor-General and the Federal Government mean references to the Governor-General in Council, except in respect of matters regarding which the Governor-General is required to act in his discretion. Similarly any reference to the Federal Government or the Federation, except where the reference is to the establishment of the Federation, means a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require. In the same way the revenues of the Federation means the revenues of the Governor-General in Council, which, subject to the provisions of the Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to the Provinces and also the provisions with respect to the Federal Railway Authority if they are in force, include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General. The expenses of the Governor-General in respect of matters regarding which he is to act in his discretion are to be defrayed out of the revenues of the Governor-General in Council.† The provisions that the Governor-General shall exercise individual judgment with respect to any matter shall not come into force until the establishment of the Federation. But although Part II of the Act, *viz.*, regarding the Federation, has not come into operation, yet the provisions requiring the previous sanction of the Governor-General for certain

The Governor-General  
and the  
Federal  
Government  
mean the  
Governor-General in  
Council

The Federation means  
British India

Revenues of  
the Federation means  
revenues of  
the Governor-General in  
Council

Provisions  
in respect of  
the exercise  
of individual  
judgment do  
not come  
into force

\* Sec. 313 (2). † Sec. 313 (3).

Certain provisions regarding the previous sanction of the Governor-General in respect of certain matters to come into operation

Special Responsibilities

General control of the Secretary of State

Directions of the Secretary of State

Direction of the Secretary of State regarding any grant or appropriation

The number of the Advisers of the Secretary of State

§ 42

The Governor-General in Council cannot contract sterling loans  
The borrowing power of the Secretary of State  
Such loans free from Indian taxation

legislative proposals, the provisions relating to broad casting, provisions relating to directions to and the principles to be observed by the Federal Railway Authority, and the provisions relating to Civil Services to be recruited by the Secretary of State have effect in relation to Defence, Ecclesiastical Affairs, External Affairs and the Tribal Areas as if the Governor-General is required to act in his discretion. Also any reference in the provisions of this Act for the time being in force to Special Responsibilities of the Governor-General means Special Responsibilities which he will have when the II Part of this Act comes into force.\* This Section does not confer on the Governor-General in Council any function of the Crown in its relations with the Indian States.†

**Control of the Secretary of State.**—The Governor-General in Council or the Governor-General is subject to the general control of the Secretary of State in matters with respect to which he is to act in his discretion and also other matters. He must comply with the directions given to him from time to time by the Secretary of State. The validity of any thing done by the Governor-General in Council or the Governor-General, however, cannot be called in question on the ground that it was done otherwise than in accordance with these provisions.

The Secretary of State cannot give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his Advisers. During the period of transition the number of these Advisers cannot be more than twelve or less than eight. On the establishment of the Federation, such of them as the Secretary of State may direct shall cease to hold office.‡

**Sterling Loans.**—During this transitional period, the Governor-General in Council cannot contract any sterling loan; but if it is so provided by the Parliament, the Secretary of State may within the prescribed limit contract such loans on behalf of the Governor-General in Council. The Secretary of State cannot exercise this power of borrowing unless the same is approved by a majority of his Advisers present at the meeting. These loans are free from any Indian taxation and are to be considered as Trust

\* Sec. 313 (4). † Sec. 313 (5). ‡ Sec. 314.

Stocks. Any legal proceedings in respect of these loans may be brought in the United Kingdom against the Secretary of State, but no liability can be imposed in respect of them on the Exchequer of the United Kingdom.\*

Legal proceedings against the Secretary of State

**The Legislature.**—The Indian Legislature is to exercise the powers of the Federal Legislature under this Act. Thus the Indian Legislature and its laws are to be taken to mean the Federal Legislature and the Federal laws respectively. The Federal taxes are also to mean taxes imposed by laws of the Indian Legislature. The Indian Legislature is not empowered by these provisions to limit the powers of the Governor-General in Council to borrow money.†

Exercise of powers of the Federal Legislature in respect of legislation and taxation

Provision is made for the continuance of certain provisions of the Government of India Act, 1919, with certain amendments consequential on the provisions of the new Act. These provisions are given in the Ninth Schedule to the Act.‡

Certain provisions of the Government of India Act, 1919 to continue in force

**Provisions as to certain Federal Authorities.**—It is provided that even before the Federation has been actually established, the Federal Court, the Federal Public Service Commission, and the Federal Railway Authority may be established. They shall perform similar functions in relation to British India as they are to perform in relation to the Federation when it is established. This, however, does not affect any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act, *i.e.*, April 1st, 1937, for the coming into force either generally or for particular purposes any of the provisions in respect of the Federal Court, the Federal Public Service Commission, or the Federal Railway Authority. Under this provision the Federal Court and the Federal Public Service Commission have already been brought into existence.§

The Federal Court, the Federal Railway Authority and the Federal Public Service Commission may be established even before the Federation itself is established

**Rights and Liabilities of the Government of India.**—The rights and liabilities of the Governor-General in Council or the Governor-General, during the transitional period, shall become the rights and liabilities of the Federation when it is established. Any legal proceedings by or against the same authority shall be continued by or against the Federation after its establishment. These provisions also apply to the

Rights and Liabilities

Proceedings etc.

\* Sec. 315. † Sec. 316. ‡ Sec. 317, § Sec. 318.

Rights and liabilities of the Secretary of State

rights and liabilities of the Secretary of State in Council, which under the provisions of this Act have become rights or liabilities of the Governor-General in Council.\*

Repeal of the Government of India Act, 1919 except the Preamble

**Repeal.**—The Act repeals the Government of India Act, 1919, except the Preamble attached to it. The latter stands with the new Act bearing testimony to the intentions of the Parliament regarding the constitutional progress of India.†

Date of the establishment of the Federation

**Commencement of the Act.**—It is provided in the Act that Part II of the Act, pertaining to the Federation of India, shall come into force on the date which His Majesty may appoint by the Proclamation establishing the Federation. The remainder of the Act, *viz.*, pertaining to the changes in the Provinces and some other provisions, was also to come into force on the date to be appointed by His Majesty in Council. If His Majesty in Council considers that all these provisions of the Act, which are to come into force on a particular date, cannot conveniently be brought into operation on that date simultaneously, he may fix any other date—earlier or later than the date referred to above, for coming into force of any particular provisions of the Act for general or for particular purposes.‡

Date of the introduction of the Provincial Autonomy

Commencement of the Act

In pursuance of the above, Part III of the Act, pertaining to the Provinces, was brought into force on April 1, 1937, while no date has yet been fixed for coming into operation of part II of the Act by which the Federation of India will be established.

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\* Sec. 319, † Sec. 478. ‡ Sec. 477,

## CHAPTER XX

### THE CONSTITUTIONAL STATUS OF INDIA

No Declaration of Dominion Status ; British View ; Difference between the Indian and the British Views ; The Preamble to the Act of 1919 ; the Position under the Act of 1935 ; A Potential Dominion ; An Autonomous Unit of the Empire ; India and the Home Government ; India and the Dominions ; the International Status of India.

**No Declaration of Dominion Status.**—What change does the Government of India Act, 1935, introduce in the constitutional status of India *vis-a-vis* Britain, the Dominions, and the other countries outside the British Empire? It is not very easy to give a precise answer to this question. Yet it is not difficult to give a negative answer that, strictly speaking, the Act does not introduce any change in that respect. Legally and constitutionally the position is as it was after the passing of the Act of 1919. It has already been stated that in spite of a strong demand and at the cost of a great resentment and misgiving in India, the declaration of "Dominion Status" as a goal for India was not included in the Act. It was, however, stated on behalf of the British Government that there was no intention on their part to go back upon the British promises regarding Indian constitutional development, and that they stood by the Declaration of August 20, 1917, which made it clear that it was the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions with a view to the progressive realization of Responsible Government in British India as an integral part of the Empire. In 1929, Lord Irwin interpreted the Responsible Government in respect of India, as used in the Declaration as under :—

"In view of the doubts which have been expressed both in India and Great Britain regarding the interpretation to be placed on the intentions of the British Parliament in enacting the Statute of 1919, I am authorized on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the Declaration of August, 1917, that the natural issue of India's constitutional progress as there contemplated is the attainment of "Dominion Status."

In India, therefore, the Declaration of August 20, 1917, was taken as having recognized the right of India

No Going  
back on the  
Declaration  
of August  
20, 1917

Lord Irwin's  
Interpreta-  
tion

Indian Ex-  
pectations

to the attainment of Dominion Status as an ultimate goal, and it was expected that the new Act would not only expressly recognize that but would also take a very big step towards it.

**British View.**—In 1931 after the coming to power of the National Government, things seemed to have changed. Some of the conservative British politicians considered the Declaration of 1917 a mistake and the interpretation of 1929 doubly so. They thought that Responsible Government of the British type could not succeed in India and that a special type suited to different Indian conditions ought to be devised, but there could be no going back on the Declaration of August 20, 1917. So the British Government declared that it had every intention to act upon it. But then the Responsible Government as it worked in the Dominions in 1917, and which was understood to have been promised to India in the Declaration of 1917, and the Dominion Status were almost interchangeable terms in 1917 as the conception of the latter had not as yet fully developed and its implications were not yet fully clear. After the passing of the Statute of Westminster of 1931, the conception, incidents, and implications of Dominion Status were crystallized, and it came to mean much more than the British statesmen were prepared to grant or promise to grant to India even as a goal in 1935. Mr. Churchill explained that

Mr.  
Churchill's  
View

" India during the Great War had attained Dominion Status as far as rank, honour, and ceremony was concerned, but he did not foresee any reasonable time within which India could have the same constitutional freedom as Canada. The sense in which Dominion Status was used ten or fifteen years ago did not imply, in his view, Dominion structure or Dominion rights. "\*"

#### **Difference Between the Indian and the British Views.**

Thus a position was created when the politically advanced Indians demanded and hoped for full Dominion Status as defined by the Statute of Westminster of 1931, while the British Government understood their promises to mean Dominion Status as understood in 1917, viz., Dominion Status with reservations and limitations. The letter, therefore, fought shy of including this phrase in the new Act as it did not want to raise false hopes. So to the utter disappointment of the Indians and the friends of Indian aspirations, no mention of Dominion Status

No raising  
of false  
hopes.

\* Kaith, A, B : Constitutional History of India, page 469.

for India even as a goal was made in the Government of India Act, 1935.

**The Preamble to the Act of 1919.**—But the British Government stands by its promises. It persuaded the Parliament to retain the Preamble to the Act of 1919 while repealing the Act itself. Thus the Preamble to that Act stands as a witness to the intentions of the British Parliament in respect of the ultimate constitutional goal of India, which is "the progressive realization of Responsible Government in British India, as an integral part of the Empire."

Intentions  
of the Par-  
liament.

**The Position under the Act of 1935.**—Thus the Government of India Act, 1935 does not introduce any change in this respect. It leaves things as they were. As a matter of fact, it does not attempt to define the constitutional status of India. It does not confer full Dominion Status on India. Viscount Halifax stated in the Parliamentary Debates:—

No Domi-  
nion Status

"It is quite clear that no Bill can confer Dominion Status. No Parliamentary Bill would have power to do that in the sense of performing a unilateral or arbitrary act, because India has to overcome her own obstacles and it is at once air privilege and opportunity to help her to do so, and we are pledged to give her all help in that direction. I was a little surprised to hear the Noble Marquess state that he rather questioned whether there were any pledges as between us and India, but I would assert that this Bill and the Instrument of Instructions taken together undoubtedly establish conditions under which it is possible for India to move steadily forward to that full Responsible Government that we have promised to her, and of which the natural issue has been declared to be Dominion Status."

Viscount  
Halifax's  
Explan-  
ation.

**A Potential Dominion.**—Then, what is the present status of India? It is not easy to answer. Yet a number of answers have been given. Those, who decry the Government of India Act, 1935, are quite clear that India remains a dependency as before. Strictly speaking, this seems to be true. But it is equally clear that though no definite attempt is made to define the status of India as anything else, yet India is not treated merely as a dependency. At least in practice it is something much more than that. It has been said that India is a potential Dominion, though she is not yet one. She enjoys 'Dominion Status in action' without having been recognized as one. She virtually enjoys the status of a Dominion but without the structure or rights of a Dominion. Lastly it has been suggested that the enjoys Dominion Status without its functions. All



Transition  
from one  
status to  
another →

India—an  
Important  
portion of  
the Imper-  
ial Com-  
monwealth

this does not make the position clear. Perhaps it is right to say that India is moving from one status to another—from a Dependency to a Dominion. The change is yet incomplete and hence the confusion. In order to avoid resentment in India, it is not said in so many words that India is a Dependency, and yet she is not a Dominion, and even her right to be one in the distant future is not unquestionably admitted. Thus as far as India is concerned the position is the same as was defined by the Imperial Conference of 1917 which defined the Empire as "based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth and of India as an important portion of the same." Thus India is an important portion of the Imperial Commonwealth, though she is not a Dominion.

Restricted  
right

Control of  
the Home  
Govern-  
ment

**An Autonomous Unit of the Empire.**—In practice, too, this thing is not lost sight of. She is not treated exactly as a dependency, but as an important autonomous unit of the Empire or the Commonwealth with certain ill defined but restricted rights. This treatment also depends upon the convenience of the Home Government, though more often than not, she is officially treated at least outwardly as equal to the other Dominions. But her voice perhaps is not heard with such attention as that of the other Dominions. This is, however, due to the fact that the Indian people do not enjoy full self-government at home, and, therefore, the official opinion of India is directly or indirectly determined and controlled by the Home Government. Thus the status of India as a unit of the Empire also seems to depend on the constitutional changes in the structure of the government in India.

Supre-  
macy of  
the King  
in Parlia-  
ment

**India and the Home Government.**—Whatever political rights India has got, she got them as a result of a grant by the British King in Parliament and not as result of any treaty negotiated on a reciprocal basis. This means the assertion of the political supremacy of the King in Parliament over India. The Act of 1935 expressly vests the supreme authority of the Indian Constitution in the British Crown. All authority in respect of the Government of India is resumed by him, and then redistributed according to the provisions of the Act. The prerogative powers of the Crown in respect of India are saved except as otherwise provided for in the Act. The Federal Legisla-



ture or any Provincial Legislature is not empowered to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court except in so far as is expressly permitted by any subsequent provisions of the Constitution Act. Nor can they make any law affecting the Sovereign, the Royal Family, the succession to the Crown, the sovereignty, dominion, or suzerainty of the Crown in any part of India, the Law of British Nationality, the Army Act, the Air Force Act, the Naval Discipline Act, or the Law of Prize or Prize Courts. The amendment of the Constitution Act, or any Order in Council made thereunder, or any rules made under the Act by the Secretary of State, the Governor-General, or a Governor in his discretion or in the exercise of his individual judgment are also beyond the competence of the Indian Legislatures. Besides, under the Act the Crown has to perform a number of important functions in respect of the government in India. All this points out in bold relief the supremacy of the British Crown over the Government of India.

The authority of the Crown

Limitations on the powers of the Indian Legislatures

No constituent powers

The authority of the British Parliament is supreme over India. Nothing in the Constitution Act can be taken to be affecting the power of Parliament to legislate for British India, or any part thereof. The Federation of India itself is to be brought into being on an address to the King by the two Houses of Parliament. The Instrument of Instructions to the Governor-General and the Provincial Governors are to be issued after an address has been presented to His Majesty by both Houses of Parliament. The Governor-General, and the Provincial Governors are responsible to the British Parliament through the Secretary of State for the administration of the Reserved Departments and the exercise of all the powers subject to their discretion or individual judgment. The Secretary of State is enjoined to place before the Parliament certain types of Ordinances issued by the Governor-General and the Governors, and also the Proclamations issued by the latter in case of a failure of constitutional machinery. Lastly, the Secretary of State for India whose powers are real and vital in respect of the Government of India, is responsible to the British Parliament in his capacity of a member of the British Cabinet.

The supremacy of Parliament

The position of the Secretary of State

The authority of the Home Government over the Government of India is also real. This is to be

exercised through the Secretary of State for India, who is a member of the British Government. Under the provisions of the Act, the responsibility of the Secretary of State for India to the Parliament and to his colleagues of the British Cabinet is lessened only to the extent it is shifted on to the Indian Ministers. For the remaining sphere, which covers a very vast field comprising the Reserved Departments at the Centre and all the powers subject to the exercise of the discretion and the individual judgment of the Governor-General and the Provincial Governors, the Secretary of State is directly responsible to the Parliament and to his colleagues of the Cabinet. The Home Government can very effectively control the working of the Government of India at least in this sphere. It can directly control and determine the Foreign Policy and the Defence Policy of India, and through the various safeguards provided in the Constitution Act, it can determine the financial policy, the industrial policy, banking and railway policy of the country. The Services can look up to it in the ultimate resort for protection. Moreover the scheme of the Act is devised in such a way that the Home Government can through the Secretary of State, and the latter through the Governor-General and the Governors can, whenever he likes, reduce the powers of the responsible Indian ministers to insignificance. Thus the authority of the Home Government over the Government of India is still real.

The  
authority of  
the Home  
Government  
Still Real  
Safely of State  
influence

India—an  
important  
autonomous  
unit of the  
Common-  
wealth

**India and the Dominions.**—The position of India vis-a-vis the other Dominions of the British Commonwealth is also not very satisfactory. India is an important autonomous unit of the Commonwealth and is regarded as such by the Dominions. Under the provisions of the Act, India can communicate with the Dominions on the basis of equality. She can have trade relations with the Dominions as an autonomous unit of equal status. Yet the inferiority of India's status in the Empire and the lack of power of complete self-government in her internal affairs is understood by the Dominions and the Colonies and is reflected in their treatment of India and her nationals.

The Dominions are strictly controlling immigration specially of the Asiatics including the Indians. This rules out any intimate association between them and India. Indians now cannot settle down

as citizens of equal status in the self-governing Dominions like the Union of South Africa, the Commonwealth of Australia, New-Zealand and Canada. This is certainly denying India and her nationals a place in the Empire which is their due. In South Africa, in particular, the problem is assuming alarming proportions. The racial feeling is working to the detriment of India's interests and even the Government of India is helpless. Only recently the Union Government has passed the Asiatic Land Bill, which aims at barring Indians from buying land in certain localities in South Africa. This has caused great resentment among the Indians settled in South Africa and the people in this country.

Anti-Indian  
Policy of the  
Dominions

India now controls the immigration of her nationals to the British Colonies. It is only under fair conditions that it is permitted to Malaya and Ceylon. In the latter country Indians are not being well treated. Franchise is refused to them except after five years' residence and proof of intention to settle down in the country. At present it is proposed to turn out of work some thousands of Indian labourers and to repatriate them to India. In Zanzibar an attempt was made to strike at the economic interests of the Indians. In Kenya and Fiji the Indian nationals are not treated on a footing of equality. It is a pity that although India is an integral part of the British Empire, yet the treatment given to her people by the other members of the same Empire is far from satisfactory. She does not discriminate in any way against the people of these Dominions, and yet the latter are not willing to concede the enjoyment of full civil rights to her people. This is causing great resentment in India. Moreover it is being increasingly felt that as things stand she cannot get any justice from the Dominions and that her status *vis-a-vis* the Dominions cannot be improved unless there is an improvement in her status as a member of the Empire. Only the other day, Pt. Jawahar Lal Nehru expressed himself strongly on the point in the following words:—

Treatment of  
the Indian  
nationals  
in the  
Colonies

"India is weak to-day and cannot do much for her children abroad, but she does not forget them, and every insult to them is a humiliation and sorrow for her. And a day will come when her long arm will shelter and protect them and her strength will compel justice for them. Even to-day in her weakness the will of her people cannot be ultimately ignored."\*

\* Tribune, June 6, 1939.

**The International Status of India.**—India is not a sovereign state. She is not so even in the sense and to the extent the Dominions of the British Commonwealth claim to be, as the Statute of Westminster, 1931, does not apply to her. She cannot claim the equality of status with Britain and the Dominions. The question of possessing the rights of secession and neutrality, as claimed by some other Dominions, does not arise in her case at all. Thus India is not known to international law, and her nationals cannot claim in foreign countries any rights as Indians but can do so as British citizens. The foreign relations of India are controlled by the British Government, and whenever any question arises, the Government of India acts through the British Government.

**India and the League of Nations.**—It may, however, be pointed out that India is an original member of the League of Nations, and is a signatory to the Covenant of the League. She was also represented in the Peace Congress of 1919. All this implies sovereign autonomous status which, however, is not enjoyed by India. The separate representation conceded to India is rather premature. According to Professor Keith,\* the position of India in the League is frankly anomalous, as her policy is determined by the British Government.

In conclusion, it may be stated that India is not yet a Dominion, but is on the way to become one. She is passing through a transitional period and, it is hoped, will attain Dominion Status in the long run. But only in the long run !

Rule  
aid  
Par

India is not  
known to  
international  
law

F  
P  
C  
S  
T  
C  
S

Period of  
Transition

\* Keith, A. B. "A Constitutional History of India," p. 473.

## CHAPTER XXI PROVINCIAL AUTONOMY IN ACTION

### Retrospect AND Prospect

Inauguration of Provincial Autonomy ; The Congress and Office Acceptance ; The Congress Demand ; A Gesture of Goodwill ; Invitations and Breakdown ; Explanation by Mahatma Gandhi ; The Constitutional Crisis ; The Interim Ministries ; Need for Action ; The Constitutional Controversy ; The End of the Crisis ; The End of the Interim Ministries ; Implications of the Understanding ; The Great Change ; The Congress Ministries in Action ; Small Salary for the Ministers ; The Problems before the Ministries ; The Work of the Congress Ministries ; In the United Provinces ; In Central Provinces and Berar ; In Bombay ; In Bihar ; In Orissa ; In Madras ; In Assam ; In North-West Frontier Province ; Non-Congress Ministries ; In Sind ; In Bengal ; In the Punjab ; The Achievement of Provincial Autonomy ; Problems of Provincial Autonomy ; Provincial Finance ; The Governors and the Ministers ; The Legislatures ; Party Changes ; The Ministerial Parties and the Opposition ; No Political Parties ; The Communal Problem ; The Public Services ; Provincialism ; Provincial Parties and High Commands ; The Ministries and the Congress Organizations ; The Unsolved Problems ; Limitations of Provincial Autonomy ; the Future.

**Inauguration of Provincial Autonomy.**—The Provincial Part of the Government of India Act, 1935, came into force on 1st April, 1937. Provincial Autonomy was inaugurated in the Provinces on that date. On the invitation of the Governors, Councils of Ministers were formed by the leaders of the majority parties in the Provinces of the Punjab, Bengal, Sind, Assam, and North-West Frontier Province, where the non-Congress parties had secured majority of seats in the Provincial Legislatures. But in the remaining Provinces—the United Provinces, Central Provinces and Berar, Bombay, Madras, Bihar, and Orissa, where the Congress had secured majority of seats in the Legislatures, Councils of Ministers could not be formed.

**The Congress and Office-Acceptance.**—The Congress had long been divided on the office-acceptance issue. A section of the Congressmen was not satisfied with extra-constitutional work of the type of civil disobedience and non-co-operation, but desired to capture the citadel of power and prestige in the Provinces, where the Congress might be able to secure majorities of seats, in order to keep out the reactionaries and opportunists who might use the newly

Ministries formed in the Punjab, Bengal, Sind, Assam, and N. W. F. Province

No Ministries in U. P., C. P. and Berar, Bombay, Madras, Bihar, and Orissa

Arguments  
in favour  
of Office-  
Acceptance

acquired powers under the Act for the suppression of advanced political movements. These Congressmen believed in exerting political pressure from inside as well as from outside and wanted to create constitutional crises in order to wreck "the unwanted Constitution." It was also argued that by the judicious use of the power acquired under the Act, some good might be done to the masses by giving a practical shape to the constructive programme of the Congress. Moreover the Congress organization could itself be strengthened under the protection of the Congress Ministries. This proposal for 'office-acceptance' seemed to have the general support of the intelligentsia in the country. So the pro-office party in the Congress suggested that non-acceptance of office by the Congress will disappoint the intelligent public opinion in the country and might turn it away from the Congress into the arms of those parties, which promised to give some relief to the people. Against this the anti-office acceptance group argued that the acceptance of office was tantamount to the acceptance of the Constitution which had been definitely rejected by the Congress. Moreover it was likely to kill the revolutionary spirit of the nation and settle down the country to the rut of constitutionalism forgetting the bigger issue of national independence.

Arguments  
against  
Office-  
Acceptance

Need of a  
gesture on  
the part of  
the British  
Government

Demand for  
Assurance

**The Congress Demand.**—In order to avoid the split on this issue, the decision was postponed for a long time by the Congress High Command, but when the General Elections in the Provinces were over by the end of February, 1937, and it was known that the Congress had been returned in majority in six out of eleven Provinces, the issue had to be decided. At a meeting of the Congress leaders at Wardha, Mahatma Gandhi is reported to have given a hint that it shall amount to dishonouring its own word, if the Congress, accepted office without any gesture on the part of the British Government indicating a change of heart on their part in respect of the Congress as a result of the verdict of the country in its favour. The question was taken up at the meeting of the Working Committee of the Congress at Delhi on 15th March, 1937. On the suggestion of Mahatma Gandhi, it was resolved that the Congress parties in the Provinces should form Councils of Ministers, if the leaders of the parties

were satisfied and were able to declare publicly that they had sufficient assurance from the Governors that the Special Powers vested with them in the Act would not be used as long as the Ministers acted within the four corners of the Constitution. In other words the Governors were to give assurance that they would abstain from the use of their Special Powers and powers of discretion and individual judgment against the advice of the Councils of Ministers in respect of ministerial action, if it was not positively unconstitutional. The implications of the acceptance of this demand were far reaching because this was calculated to change the whole complexion of the scheme of Provincial Autonomy by widening its scope.

No use of  
Special  
Powers by  
the  
Governors

**A Gesture of Goodwill.**—On the side of the Government, His Excellency the Viceroy declared in a speech, which he made at the dinner arranged in his honour by the President of the Council of State, Sir Maneckji Dadabhoy:

"I have faith in the zeal and public spirit of those in whose hands the electorates have entrusted opportunities for useful and honourable service to the community. It will be both the duty and privilege of the Governors of the provinces and of the Governor-General in his proper sphere to collaborate with several provincial Ministries in their most responsible tasks in a spirit of sympathy, helpfulness and co-operation.

His  
Excellency  
the Viceroy's  
Speech

"If all concerned will approach in faith and courage the great charge which is laid upon them, determined to do their utmost faithfully to serve the highest interest of the people, then I am very confident that these apprehensions and doubts, sincerely held I know, which now trouble many minds, will disappear like mists of morning before the rising sun."

This was perhaps intended as a gesture of goodwill and trust on behalf of the British Government.

**Invitations and Breakdown.**—This was followed by invitations to discuss the formation of the Councils of Ministers to the leaders of the Congress parties in the six Provinces, where they had majorities, by the Governors of those Provinces. In response to the invitations, the leaders saw the Governors, but the negotiations broke down, as the latter pleaded inability to give assurance of the type demanded in the resolution of the All-India Congress Working Committee. The communiques were issued by the Governors regretfully acknowledging this breakdown of the negotiations. It was made clear in the communique issued by the Governor of the United Provinces that—



The Com-  
muniqué  
issued by the  
Governor of  
U. P.

The  
Constitu-  
tional crisis

Ru-  
aid  
Pai

"The obligations laid upon the Governor by the Government of India Act and the Instrument of Instructions are clear and specific. . . . It is clearly not in the power of the Governor to meet such a demand."

The communiques of other Governors also were couched in similar language and expressed similar ideas. The Congress party leaders, however, were not satisfied with this, and did not agree to form the Councils of Ministers, thus precipitating a constitutional crisis of the first magnitude.

**Explanation by Mahatma Gandhi.**—On 30th of March, 1937, Mahatma Gandhi issued a statement on the refusal of the Governors to give the required assurances, in which he claimed to be the sole author of the office-acceptance clause of the Congress resolution and the originator of the idea of attaching a condition to office-acceptance. He declared *inter alia*:

"My desire was not to lay down any impossible condition. On the contrary, I wanted to devise a condition that could be easily accepted by Governors. There was no intention whatsoever to lay down a condition whose acceptance would mean any slightest abrogation of the Constitution. Congressmen were well aware that they could not, and would not, ask for any such amendment. . . . The object of that section of the Congress which believed in office-acceptance was pending the creation by means consistent with the Congress creed of non-violence, of a situation that would transfer all power to the people, to work in offices so as to strengthen the Congress which has been shown predominantly to represent mass opinion.

"I felt that this subject could not be secured unless there was a gentlemanly understanding between Governors and their Congress Ministers that they would not exercise their special powers of interference so long as Ministers acted within the constitution. Not to do so would be to court an almost immediate deadlock after entering upon office. I felt that honesty demanded that understanding. It is common cause that Governors have discretionary powers. Surely here was nothing extra constitutional in their saying that they would not exercise their discretion against Ministers carrying on constitutional activities. It may be remembered that the understanding was not to touch numerous other safe-guards over which Governors had no powers. A strong party with a decisive backing of the electorate could not be expected to put itself in the precarious position of the interference at will of Governors. . . ."

**The Constitutional Crisis.**—Here the matters stood for the time being. The parties seemed to be so sure of their respective positions that they did not feel inclined to reconsider it with a view to arriving at a compromise. The Governors in their action had the support of the British Government as is clear from the following statement of the Secretary of State for India in the House of Lords:



"The Viceroy with my full approval reminded the Governors that while they were fully entitled to offer and while indeed I hope that they would offer to the Congress leaders in the Provinces the fullest possible support within the framework of the Constitution, Parliament has imposed upon them certain obligations of which without the authority of Parliament, they could not divest themselves."

The  
Statement of  
the Secretary  
of State

On the other hand, the Congress supported as it was by absolute majorities in the Legislatures and enlightened public opinion outside, did not feel like giving in. Thus there ensued a constitutional crisis at the very outset of the new Constitution. The Constitution seemed to have been virtually wrecked before it had been inaugurated. The Act of 1935 seemed to have been nullified before it was even tried. That meant wasting of the great labours that had been spent in evolving the scheme which was embodied in the Act of 1935, and reopening of the whole 'Indian Question.'

The  
Constitution  
virtually  
wrecked

**The Interim Ministries.**—This could not be allowed to take place. The utter breakdown of the Constitution had to be prevented. A way out had to be found and the Governors decided to install Minority Governments in office. They invited some individual members of the Legislatures to undertake the formation of the Councils of Ministers. The latter agreed to do so. They were also successful in finding out some obliging gentlemen who were willing to accept places in the Councils of Ministers. These Councils of Ministers showed their willingness to shoulder the responsibility of carrying on the administration in the Provinces.

The  
Minority  
Govern-  
ments

Thus the situation was saved. These Minority Governments were in the very nature of things stop-gap and *interim* arrangements. These Ministries were, therefore, called the *Interim Ministries*. They were to exist till the time when the leaders of the majority parties could agree to shoulder the responsibility which was by right theirs.

Stop-gap  
arrange-  
ments

The appointment of the *Interim Ministries* was objected to as illegal in India, and a regular controversy arose on the point, supported by arguments by constitutional pundits on both sides.\* These Ministries were clearly against the Instruments of Instructions to the Governors, though not against the provisions of the Act itself. They were justified on the plea that the King's Government

The Legality  
of the  
appointment  
of the  
Interim  
Ministries  
questioned

\* See page 51

must be carried on, against which it was urged that though the King's Government must be carried on, it must be carried on according to law and not against law.

Protection  
for the  
Interim  
Ministries

These *Interim Ministries* could not face the Legislatures as they did not command majority of votes. The majorities in the Legislatures would have made their position very awkward by passing straight votes of no-confidence. So in order to afford them protection against this contingency and to secure time for a permanent solution of the deadlock, advantage was taken of the provision in the Act which allowed six months' time for calling the first session of the first Provincial Legislatures after the introduction of Provincial Autonomy. The Legislatures in the Provinces concerned were not summoned to meet so that they were deprived of the opportunity to express their opinion on the action of the Governors in appointing *Interim Ministries*.

**Need for Action.**—During the six months of their existence, the *Interim Ministries* continued as best as they could, but they failed to catch the imagination of the people. There was a political stalemate in the country and the controversy in respect of the legality or otherwise of the appointment of these Minority Governments went on without leading to any definite conclusion. This controversy lost its importance as the prescribed period of six months came to an end. After the lapse of this period, the newly elected Legislatures had to be summoned, otherwise the breakdown of the Constitution would be clear. Something, therefore, had to be done to save the situation.

Lord  
Lothian's  
advice

Marquess of  
Zetland's  
Statement

**The Constitutional Controversy.**—But the parties concerned still stuck to their guns. Mahatma Gandhi repeated and explained the Congress demand in a statement issued on 30th March, 1937. In a broadcast from London on 29th March, 1937, and in a letter to *The Times*, Lord Lothian advised the Congress to accept office without any assurance. The Marquess of Zetland, the Secretary of State for India, in a lengthy statement in the House of Lords on 8th April, 1937, praised the courage and public spirit of the *Interim Ministries*. He further declared that the reserved powers of the Governors were an integral part of the Constitution and their exercise

depended upon the policy and action of the Ministers themselves. On 10th of April, 1937, Mahatma Gandhi suggested the appointment of an arbitration tribunal of three judges to decide whether the Governors could give the required assurance under the Act. The proposal, however, was rejected by Mr. Butler in a statement in the House of Commons, though he made it clear that it was not their intention that the Governors by a narrow or legalistic interpretation of their own responsibilities should touch upon the wide powers which it was intended to place in the hands of the Ministers. On May 6, 1937, the Marquess of Zetland repeated this. He declared that the essence of the new Constitution was that the responsibility and initiative for the whole government of the Province, though in form vesting in the Governor, should pass to the Ministry; and the reserved powers of which so much is made by the Congress would not normally be in operation.

Gandhi's proposal for the appointment of an arbitration tribunal

Rejected by the British Government

Marquess of Zetland's Explanation

This brought the parties nearer to each other. The Congress now demanded that in the event of a serious difference of opinion between the Ministers and the Governors, the latter should dismiss the former. Mahatma Gandhi further narrowed down the demand by demanding that in cases of disagreement, the Governors should demand the resignation from the Ministers. The Marquess of Zetland, however, did not consider it wise or in accordance with the intention of Parliament to lay down that in such circumstances, the Governor must necessarily call for the resignation of the Ministers. On 15th of June, 1937. Mr. Stanley declared in the House of Commons that they were more than ready to meet the Congress half way.

Demand for dismissal and resignation

Zetland's Refusal

Mr. Stanley's conciliatory statement

This statement prepared the ground for the final statement made by His Excellency the Viceroy on 21st June, 1937, which cleared the way for the solution of the impasse. His Excellency *inter alia* stated:—

The statement by His Excellency the Viceroy

".... Three months' experience of the operation of the Constitution, short as I agree that that period is, has conclusively shown from the practical point of view, that any legal difficulties in regard to the grant of such assurances apart, those assurances are not essential to the smooth and harmonious working of the Constitution.... There is no vestige of foundation for the assertion, which I have seen advanced, that the Governor is entitled, under the Act, at his pleasure, to intervene at random in the administration of the Province. Those Special Responsibilities are, as I have said, restricted in scope to the narrowest limits possible. Even so limited as they are, a Governor will at all times be concerned to

Assurances not essential

The Governor will try to carry the Ministers with him

carry his Ministers with him, while in other respects in the field of their ministerial responsibilities, it is mandatory on a Governor to be guided by the advice of his Ministers, even though, for whatever reason, he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice . . . .

The  
Ministers  
can advise  
the Gov-  
ernor over  
the whole  
range of  
executive  
Government

I have already stated that ministers have the duty of advising the Governor over the whole range of the executive Government within the ministerial field, including the area of the Special Responsibilities. For advice so given, whether on matters within or without the scope of the Special Responsibilities, Ministers are answerable to the Legislature? In all such matters in which he is not specifically required to exercise his individual judgment, it is mandatory upon the Governor to accept the advice of his Ministers.

Public  
declaration  
by the  
Ministers

Within the limited area of his special responsibilities, a Governor is directly answerable to Parliament, whether he accepts or does not accept the advice of his Ministers. But if the Governor is unable to accept the advice of his Ministers, then the responsibility for his decision is his and his alone. In that event, Ministers bear no responsibility for the decision, and are entitled—if they so desire—publicly to state that they take no responsibility for that particular decision or even that they have advised the Governor in an opposite sense . . . .

Resignation  
and dismis-  
sal

I ought perhaps to add that the suggestion that the Governor should in certain circumstances demand the resignation of his Ministers is not the solution provided by the Act, so that it will not be possible for Governors to accept it. Both resignation and dismissal are possible, the former at the option of the Ministers and the latter at the option of the Governors. But the Act does not contemplate that the Governor's option should be used to force the Minister's option and thus to shift the responsibility from himself . . . .

Removal of  
apprehen-  
sions

This great speech of His Excellency clarified the whole position. The interpretations, explanations, and assurances helped to clear the atmosphere by removing apprehensions and prejudices based on distrust. The political opinion in this country welcomed this great speech and expected the Congress to respond.

Satisfaction  
among  
Congressmen

**The End of the Crisis.**—The Working Committee of the Indian National Congress met at Wardha from July 5th to 7th, 1937, and reviewed the situation. The Viceroy's statement had been very conciliatory. "It gave in spirit what it could not give in letter. It convinced the Congress and Mr. Gandhi that the British Government wished the Congress to take seriously to the constitutional experiment on which it had embarked." Moreover, the Congress members of the Legislatures and majority of Congressmen seemed to be satisfied with the assurances and explanations given. The Working Committee, therefore, resolved—

"That Congressmen be permitted to accept office where they may be invited thereto, but it desires to make it clear that office is to be accepted and utilized for the purpose of working in accordance with the lines laid down in the Congress election manifesto and to further, in every possible way, the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other."

Congress  
Working  
Committee's  
Resolution

In pursuance of this resolution, Congress accepted office in the six Provinces of Bombay, Madras, Central Provinces and Berar, United Provinces, Bihar, and Orissa, where it commanded majority in the Legislatures.

Formation  
of Congress  
Ministries

**End of the Interim Ministries.**—The *Interim Ministries* were perhaps too glad to make way, and faded out of the picture. "Their title to fame consisted in a loyal intention to help "carrying on the King's Government," filling a lacuna in a transition period, as also to the fact that there were men in India who were prepared to canalise national endeavour for the realization of the national destiny." Whatever view might be held about the legality or illegality of the appointment of the *Interim Ministries*, progressive public opinion in India cannot appreciate the conduct of those politicians, who on the very outset of the inauguration of responsible government in the Provinces helped to set a bad precedent by the formation of minority governments, which runs counter to the principles of responsible self-government.

Their title  
to fame

Condemned  
by progres-  
sive public  
opinion

**Implications of the Understanding.**—Before proceeding further to examine the work of the Congress and Non-Congress Ministries in the Provinces, it seems desirable to examine the implications and results of the assurances and explanations that ended the controversy. The Governor-General and Viceroy gave the virtual assurance that the Governors had no intention to stand in the way of the constitutional activities of the Ministers. The Governors would use their best endeavours to avoid any conflict with their Ministers. In case the Governors do not accept the advice of the Ministers in the sphere of their Special Responsibilities, the latter may, if they so desire, state publicly that the responsibility for that particular decision was that of the Governor and that they had advised him otherwise. On the question of resignation *versus* dismissal, it was stated that the Ministers could resign of their own accord or the Governor might dismiss them, as the occasion may demand. On the

Summary of  
the Viceroy's  
statement

face of it, this did not seem to concede anything, and thus to change the situation.

Legal Interpretation

Practical Interpretation

Change in practice

Expansion of the scope of Provincial Autonomy

Legally no assurance of the kind demanded by the Congress was given. It is clear that the responsibility of the Governor in the sphere of his Special Responsibilities is still theoretically his, and he can use his individual judgment in the last resort even against the advice of his Ministers. What is conceded is only this that the Ministers can publicly declare that the responsibility for the decision was that of the Governor and that their advice was different. Even the demand that the Governor should dismiss his Ministers or demand their resignation in the event of a serious conflict of opinion is not conceded as the power of the Governor to dismiss the Ministers is kept in tact and the Ministers are also given the liberty to resign. Thus apparently there does not seem to be any change; yet in actual practice these explanations, interpretations, and assurances have brought about a very great change. It is made clear beyond all doubt that the Parliament intended to confer on Ministers responsible to their Legislatures unrestricted powers to administer the Provincial Governments and that there is no foundation for the suggestion that a Governor is free, or is entitled, or has the power to interfere with the day-to-day administration of a Province outside the limited range of the Responsibilities especially vested with him. Even in the latter sphere, it should be the concern of the Governor to carry his Ministers with him. In actual effect, this means a great change. It is clear that the whole provincial administration is now subject to the ministerial advice, and it is understood that as far as he can help it, the Governor will not interfere even in the sphere of his Special Responsibilities. This means a great extension of the power of the responsible Ministers. This makes the Provincial Autonomy something real and tangible. It may be said that this assurance has vested the transparent soul of the Provincial Autonomy with a body. This is a great advance in view of the fact that one cannot escape the impression from the study of the Act itself, whatever might have been said in speeches and otherwise, that the framers of the Act intended the powers of interference and control of the Governors.

to be real and to be used at will. Otherwise why should they be made mandatory? If it had been intended otherwise, their use would have been optional rather than mandatory, and the word "may" would have been used instead of the word "shall," which has been generally used in the Act. As a result of the controversy and by the application of the Gentleman's Agreement, as Mahatma Gandhi once put it, it is understood that ordinarily these powers will not be used against the advice of the Ministers. By one stroke of constructive statesmanship expressed through a move, which looked childish and even frivolous to some, Mahatma Gandhi changed the whole meaning of Provincial Autonomy.

The  
Gentleman's  
Agreement

But one more aspect of the controversy should not be lost sight of. The Gentleman's Agreement implies obligations on both sides. If the Governors are expected not to use their Special Powers and allow the Ministers free scope in respect of their constitutional activities, Mahatma Gandhi, on behalf of the Congress, has also given this assurance that it is no part of the policy of the Congress Ministers to seek deadlocks on minor matters. In actual practice, it means that the policy of ending the Act by means of constitutional deadlocks, as was originally advocated by the pro-office-acceptance Congressmen, is given up to all intents and purposes; and that the Congress is engaged in working the Constitution and to get the best out of it for the good of the depressed Indian masses. Thus a great change has been brought about in the policy of the Congress, which has, at least for the time being, given up the barren path of civil disobedience and non-co-operation and is engaged in useful constructive work for giving relief to the poor masses. It has, however, been made clear that the Congress does not fight shy of constitutional deadlocks on issues of fundamental importance, but its official policy, as is stated in the resolution of the Working Committee quoted above, is to *combat* the Act and not to *wreck* it. In actual practice, however, the Constitution is being worked with the idea of improving the condition of the masses.

Obligations  
on both sides

Mahatma's  
assurance

Congress  
engaged in  
constructive  
work

**The Great Change.**—The acceptance of ministerial offices by Congressmen brought about a great change in the political life of the country. The Indian National Congress which was till recently opposed to



From civil  
disobedience  
to constitu-  
tionalism

the Government and was engaged in civil-obedience and non-co-operation with the idea of clogging the administrative machinery now formed the Government in six out of eleven Provinces in India and became responsible for running the administrative machinery. The organization that had so far been busy in the destructive work of non-co-operation, as some put it, was now called upon to take up the constructive work of reform. It had gone to the country with an attractive and useful electoral programme which, had now to be given a practical shape. The reforms, which the Congress had demanded as an opposition party, had to be carried through if public sympathy was to be retained.

**The Parliamentary Sub-Committee.**—This required a different mentality and a different attitude of mind on the part of the Congressmen. Greatest care was necessary in order to keep the Congress legislators and administrators on the right path. Moreover, the Congress being an all-India body with a uniform all-India programme, there is need for co-ordination of the work of the Congress Ministries in the different Provinces. Further, the Congress has not yet given up its programme of carrying on a fight against the British imperialism for the attainment of substance of independence for India, and for that purpose it does not propose to slacken its discipline and feels the necessity of keeping a strict control over its Ministers so that they may not lose their revolutionary mentality by coming in contact with the administrators and by sitting on comfortable cushions in gilded chambers of the Government Secretariat. For this purpose the Congress Working Committee constituted a small Parliamentary Sub-Committee, consisting of Sardar Vallabhai Patel, Maulana Abul-Kalam Azad, and Dr. Rajendra Prashad, to co-ordinate, supervise, direct, and control the work of the Congress Ministries and parties in the different Provinces.

Sardar Patel,  
M. Azad,  
and Dr.  
Rajendra  
Prashad

Programme

**The Congress Ministries in Action.**—The Congress Ministries set down to work in the light of the programme outlined in the Congress election manifesto. This followed three main lines, (a) reducing the cost of the administration and reducing the power of the bureaucracy, (b) the redistribution of wealth and economic privileges so as to better the economic position of the backward and the "have-not" classes, and (c) the restoration of political power to the people



both psychologically and practically so that imperialism and bureaucracy may go for ever. For the attainment of these objectives, a number of problems such as unemployment, poverty, education, peasant rights, industrial progress, and the uplift of the Scheduled Castes had to be tackled.

This was a Herculean task that had been set by the Congress before itself. But this had to be performed, if the poor masses were to be saved and the office-acceptance was to be justified.

A Herculean task

**Small Salary for the Ministers.**—The Congress was committed from the very beginning to cutting down the cost of the top-heavy administration in order to get more money for nation-building work. The Karachi Congress had fixed Rs. 500/- per mensem as the maximum salary for public servants in India. Some people considered this as too drastic a cut in the land of proverbial high salaries, and were sceptical that when it would come to actual acceptance of such a small salary, the Congressmen will not rise equal to the occasion. The Congress Ministers, now, gave a lie to the prophecies of these oracles by announcing that they would accept Rs. 500/- as monthly salary in addition to small allowances. This made some saving, which might not have been much but which certainly caught the imagination of the masses, produced a good impression on the electors, and set a good precedent for others.

A good precedent

**The Problems before the Ministries.**—The problems which faced the Congress and non-Congress Ministers in the Provinces were generally speaking the same. The miserable plight of the peasants called for immediate action. Increasing unemployment among the middle classes, reform of the educational system, banishment of illiteracy, encouragement of industry, jail reform, local self-government reform, administrative reform, rural reconstruction work, introduction of Prohibition, special uplift work for Scheduled Castes and working classes, etc., demanded immediate solution. The restoration of civil liberties was another problem which the Congress Ministers in particular were expected to take up immediately.

Constructive Work

**The Work of the Congress Ministries**—The work of the Congress Ministries in the different Provinces has generally followed identical lines with certain minor exceptions. Civil liberties have been restored

by the release of political prisoners and return of securities to the newspapers, though any trend of violence in speeches and writings is deprecated. Peasant problem has been attacked by debt legislation and tenancy legislation. Educational reform has been attempted by working on the lines of the Wardha Scheme of education. Literacy campaigns have been organized. Jail reform has been undertaken. Rural reconstruction work has been taken up. Prohibition has been introduced in certain selected areas. It is not possible here to describe in detail the work of the various Provincial Ministries, yet an attempt will be made in the following pages to give a brief summary of their work so as to judge the achievement of Provincial Autonomy.

**In the United Provinces.**—The Congress Government in the United Provinces started by lifting the ban on a number of associations in the Province, like the Youth League, Workers' and Peasants' Party, Kisan Sangh, Hindustani Sewa Dal, etc. It released a number of political prisoners, and police surveillance over political workers and specially reporting of political speeches, etc., was discontinued. Freedom of the press was established. A special officer was appointed for the purpose of eradicating bribery and corruption in the Public Services. A committee under the chairmanship of Kunwar Sir Maharaj Singh was appointed to enquire into the general question of corruption. Administrative reforms in respect of the working of honorary assistant collectors, separation of the judiciary from the executive, local self-government, and jail administration have been introduced. Expenditure and scope of the beneficent departments have been considerably widened. Educational reform on the lines of the Wardha Scheme has been undertaken. Prohibition has been introduced in Etah and Mainpore districts of the Province. Attention is also being paid to the industrial uplift of the Province.

The Government has paid special attention to the problem of the peasant. The Hon'ble Premier, Pandit G. B. Pant, made an announcement in the Legislative Assembly on 2nd August, 1937, indicating the Government's intention to form two Committees: one to consider reform of the Tenancy and Land Revenue Law, and the other to examine proposals for relieving rural indebtedness. The Government issued instructions for stay of

Restoration  
of Civil  
liberties

Corruption

Administra-  
tive Reforms

Constructive  
Work

The  
Problem of  
the Peasant

proceedings for recovery of arrears of rents previous to Rabi 1344 Fasli, for prohibiting ejectment or enhancement, and the recovery of debts due from farmers and small tenants. This was given statutory effect by passing two Acts. The farmers are given facilities for the depositing of their rents in the tahsils free of charge. Relief has been given in the land revenue and *takavi* has been liberally distributed. Attention has been paid to fodder and grazing in rural areas. The Fodder and Grazing Committee prepared a five-years' programme of research on the improvement of fodder-production in waste-lands and ravines and also on the relative nutritive value of the principal grasses. Special attention is being paid to improve the technique of agriculture. A special scheme for rural development was taken in hand. Tenancy legislation, purposing to introduce great changes, has been introduced in the Legislature. This has been passed by the Assembly and the Council.

Rural  
uplift

Tenancy  
Legislation

The Government has paid attention to industries and labour. It passed the United Provinces Sugar Factories Control Bill to regulate the working of the sugar factories in the Province. It approved of a scheme for the development of the Raw Hide Industry. The attention of the Government was drawn towards the problem of labour by some labour troubles at Cawnpore. It has passed a Bill for the settlement of labour disputes by conciliation by setting up a regular machinery for looking after the interests of labour and promoting close contact between the employers and the employees. Rentrenchment has also been brought about in the cost of the administration, and with this end in view the moving of the Government to the hills in summer has been considerably stopped.

Industries  
and Labour

**In Central Provinces and Berar.**—In other Provinces the work has proceeded on similar lines. The Government of Central Provinces and Berar passed orders assuring liberty of person, speech, and the press. The official move to the hills was discontinued. Relief was granted to the agriculturists. Facilities for the payment of land-revenue were granted. The liberal system of remissions and suspensions of land revenue was continued. The Protection of Debtors Act was passed. With the idea of spreading education among the masses in the countryside, the Vidya Mandir Scheme has been

The Vidya  
Mandir  
Scheme

introduced. Local self-government and jail reforms have been undertaken. A beginning towards Prohibition has been made by declaring Narsinghpur sub-division, Saugar district, Akot taluq and the Badnera, Hinganghat and Katni industrial areas dry.

Restoration  
of Lands  
and  
Properties

Restoration  
of Civil  
Liberty

Prisons

The Trades  
Disputes  
Act  
Peasant  
Problem

Prohibition

Work for  
the  
Scheduled  
Castes

**In Bombay.**—The Congress Ministry in Bombay also tried to secure economy and retrenchment. It secured the restoration of lands and immovable properties, forfeited and sold in consequence of the Civil Disobedience. Movement, to their original holders after the payment of compensation to those who bought those properties. It restored civil liberty by rescinding numerous orders issued by the previous Governments under the emergency and other laws, and by lifting bans on associations and persons. It released certain political prisoners. It re-organized the prison system with the idea of promoting jail industries. It appointed a Committee to report on the policy in respect of the Criminal Tribes. It abolished Benches of Honorary Magistrates in the Province except in the City of Bombay. To check communal disturbances in Bombay, it passed the *Goonda* Act. To check labour troubles, it passed the Trades Disputes Act. Special attention has been paid to the problems of rural areas. Besides granting the usual relief to the peasants, the Bombay Small Holders Relief Act, 1938, and the Bombay Money-Lenders Act have been passed. The Government is committed to the policy of complete prohibition of the sale and consumption of alcoholic drinks, opium and hemp drugs. In the first instance a considerable reduction of toddy booths was carried out in Bombay City. Then Ahmadabad and suburbs were declared dry. Experiments in Prohibition of the sale of intoxicants were tried in Bombay on certain days. Bombay has now been declared completely dry from 1st August, 1939. The Government takes special interest in measures for the advancement of education among the Scheduled Castes *viz.*; *Harijans*. Their rights in respect of worship and entry to public places have also been recognized.

**In Bihar.**—In Bihar, the Government has paid special attention to the problem of the peasantry and the land. The Ministry tried to carry out its tenancy legislation with the agreement and approval of the

landlords. Immediate relief was given to the tenants both in Bihar proper and Chhota Nagpur. A Bill was also introduced to provide for the restoration of *bakasht* lands to the tenants and reducing the arrears of rent in certain cases. This was followed by a Supplementary Bill dealing with such matters as realization of rent by certificate procedure, abolition of *salami*, the definition of the rights of the tenants in trees, and suits and proceedings for recovery of rent. A separate Tenancy Bill was introduced for Chota Nagpur. The Bihar Money Lenders' Bill and the Bihar Agricultural Income Bill have been passed. The latter Bill was designed to get more money to finance the rural development scheme. The Bihar Markets and Dealers' Bill designed to provide for better control and regulation of markets and for licensing shops was also introduced. An Act was passed to regulate the sugar industry. Jail administration has been improved. Committees were appointed to suggest ways and means for bringing about retrenchment and also to examine the question of separation of executive and judicial functions. Educational reforms have been undertaken. Prohibition has been introduced in the District of Saran.

The  
Tenancy  
Legislation

Other  
Beneficent  
Work

**In Orissa**—The new Province of Orissa was formed by joining together the tail ends of three different Provinces of Madras, Central Provinces and Berar, and Bihar. It is a small, poor, and backward Province. Sixty percent of its entire area is covered by the Partially Excluded Areas. The Government, under Hon'ble Mr. Biswanath Dass, has done its best to carry out the usual Congress programme of reforms. It sponsored two important Bills, the Orissa Tenancy Act Amending Bill and the Madras Land Estate Act Amending Bill. It undertook to reorganize the Co-operative Department. Educational reform has also been undertaken, special attention having been paid to the spread of education among the *Harijans*, hill-tribes and other backward communities. The learning of Hindustani in schools has been encouraged. *Khadi* and cottage industries have been patronized. Land mortgage banks have been established. It is proposed to introduce Prohibition in the Province.

Constructive  
work

**In Madras**.—The Madras Government has also worked on similar lines. It was the first to introduce Prohibition in the country by banning the

## Prohibition

use of intoxicants in the Salem District. The scope of Prohibition has recently been widened to include Cuddapah and Chittoor Districts. It also tackled the land-revenue system and passed the Agriculturist Relief Bill. The Prakasam Committee was appointed to overhaul the zamindari system. It has been declared that the untouchability will not be recognized as a legal disability in spite of custom or legal decisions to the contrary. To secure the opening of the temples to the members of the Scheduled Castes, it is proposed to pass the "Malabar Temple Entry Bill." Recently an ordinance has been enacted to indemnify from legal action those who may open the temples to the members of the Depressed Classes before the passing of the Bill. Jail reforms, local self-government reforms, and some other administrative reforms have been introduced. The Government has decided to introduce the compulsory teaching of Hindi in schools.

## Land-revenue system

## Other Reforms

## Legislation

**In Assam.**—The Provinces of Assam and North-West Frontier Province have also come under the rule of the Congress Ministries, which are carrying on work according to the principles of the Congress. In Assam, the Ministry has either passed or proposes to pass the Assam Provincial Legislature (Removal of Disqualifications) Act, 1938, a Bill to increase the tax on motor vehicles, the Assam Criminal Law Amendment Bill, the Assam Court Fees (Amendment) Bill, the Agricultural Income-tax Bill, the Sales Tax Bill on Petrol and Lubricants, Entertainments Duty Bill, Betting Tax Bill, the Assam Municipal (Amendment) Bill, the Goalpara Tenancy (Amendment) Bill, the Sylhet Tenancy (Amendment) Bill, and the Revenue Tribunal Bill. It has also undertaken the prohibition of opium.

## Reforms

**In the North-West Frontier Province.**—In the North-West Frontier Province, the Congress Government started by repealing the Frontier Crime Regulation. The Tehri Bills, which it passed, were returned by the Governor with certain suggested amendments, to which the Legislature agreed. The repeal of Section 124-A was also prevented by the Governor. A Bill for the relief of agriculturists has been passed, while it is proposed to pass a Marketing Bill.

**Non-Congress Ministries : In Sind.**—The Provinces of Sind, Bengal, and the Punjab are under non-Congress Ministries. In Sind, the Allahbaksh Ministry,

which is an independent Ministry receiving the support of both Hindu members and Muslim members, is carrying on work on lines akin to the Congress programme. Like the Congress Ministers, the Sind Ministers are also drawing small salaries of Rs. 500 a month. They are adopting similar ameliorative measures. The Ministry abolished nominations in local bodies. The appointment of honorary magistrates was stopped, while the number of stipendiary magistrates was increased. Swadeshi was encouraged. Some confiscated property of the Congress Committees was returned, and Mr. Hans Raj "Wireless" was released. A number of Committees, the Retrenchment Committee, the Education Committee, the Rasai Committee, the Excise Committee, and the Joint Electorate Committee were appointed. No action has so far been taken on their reports due to uncertain political conditions in the Province. An Anti-Dowry Act was passed.

Local  
Government  
reforms

Enquiry  
Committees

**In Bengal.**—The Bengal Government is a Coalition Government, consisting of the Krisak Proja Party group led by Hon'ble Mr. Fazl-ul-Haq, the Muslim League Party led by Sir Nazim-ud-Din, some Hindu members under Sir Nalini Ranjan Sarkar, some Scheduled Caste members, and the Europeans. At the very outset it was faced with the problem of the release of the political prisoners and the detainees. Under pressure of public opinion, it adopted the policy of a gradual release of prisoners. Some of them have been released though some are still behind the prison bars. The Government was also called upon to deal with labour troubles in jute mills. It appointed an Enquiry Committee to enquire into the antiquated land laws of Bengal. It tried to tackle the problem of rural Bengal with the help of Bengal Tenancy Act, Bengal Money Lenders' Bill, the Bengal Agricultural Debtors (Amendment) Bill, etc. It now proposes to reform the municipal administration of Calcutta by passing the Calcutta Corporation Amendment Bill. The Ministry is at present engaged in settling the question of communal proportions in the civil services in the Province.

Composition

Release of  
Political  
Prisoners

Labour  
Troubles

Rural  
Problem

Calcutta  
Corporation  
Amendment  
Act

**In the Punjab.**—It is very difficult to supply a political label to the ministerial party in the Punjab. When the General Elections were over, the Unionist Party under the leadership of Hon'ble Major Sardar Sir Sikandar Hayat Khan commanded a decisive majority.

Formation  
of the  
Ministry



Composition  
of the  
Ministry

It had, therefore, the right to form the Ministry. It was decided to have a Cabinet of six Ministers. Hon'ble Sir Sikandar Hayat Khan selected four Ministers from his own party and two from outside its ranks—one from the Khalsa National Party and one from the National Progressive Party. It is said that the two non-Unionists were included in the Ministry.

"not as the nominees of any parties but because the Unionist Leader found in them suitable colleagues to have with him in the interests of his programme. Their choice as Ministers involved no pact or bargain with the parties from which they were drawn."\*

A Coalition  
Government

A novel  
experiment

Advantages

But it cannot be gainsaid that the selection of these two Ministers assured the support of their respective parties to the Ministry, thus further augmenting the strength of the ministerial party in the House. As a result of this, the position appeared to be that the Government contained the representatives of the Unionist, the Khalsa National, and the National Progressive parties. It was supported by the Unionist *cum* the Khalsa National *cum* the National Progressive majority in the House. The ministerial party was dominated by the Unionist party and agreed to carry out its programme. Although so much is clear, yet it is not easy to say whether the Ministry was a Coalition or a Unionist Ministry. It was not a Coalition Cabinet because there was no pact or bargain with the other parties, and because the Ministers belonging to them were not exactly their nominees, and yet it was not merely a one-party Government. The constitution of such a Cabinet was a novel and "interesting political and constitutional experiment." It had some advantages of its own. It helped the ministerial party to add to its strength still further so as to make it overwhelming, thus reducing the strength of the opposition groups to insignificance. This was bound to help the Unionist party to carry out its programme much more easily than it would have been possible to do otherwise, and with the help of those who were otherwise likely to oppose it in the House. (It may, however, be admitted that even without the help of these parties, the Unionist party could have carried out its programme with the help of the absolute majority which it commanded in the House.)

\* 18 Months of Provincial Autonomy in the Punjab, p. 9.



Moreover this alliance gave the Unionist Ministry an appearance of non-sectional and non-communal combination, consisting of agriculturists and non-agriculturists, zamindars, and *banias*, landlords and peasants, urban people and rural people, and Muslims, Sikhs, Hindus, Christians and Europeans. Perhaps it was a genuine attempt on the part of Sir Sikandar to give a national appearance to his Ministry and to unite under his banner all those elements which could be united.

National  
Appearance

On the other hand, this kind of composite Cabinet blurred the distinctions between the political parties and their programmes. As the smaller groups gave their general support to the programme of the dominant party without any promise on the part of the latter to support the programme of the former, the whole thing assumed the appearance of an unprincipled alliance. Rightly or wrongly the smaller groups, therefore, were likely to be dubbed as political opportunists. Moreover, this kind of alliance was bound to stand in the way of the development of the party system without which democracy cannot work. Lastly, in the absence of any clear understanding in respect of principles and programme between the component parties, there could not be a good merger and the combination was bound to be ill-assorted and therefore weak. It was likely to give way at a critical time. The position was further complicated when the Muslim members of the Unionist party decided to owe allegiance to the Muslim League. People were certainly sceptical about the success of this experiment. Dr. Sachidananda of Patna is reported to have stated on 21st August, 1938, as under :—

Disadvant-  
ages

Unprincipled  
alliance

Ill-assorted  
combina-  
tion

“ Another non-Congress Ministry, that of the Punjab, is still well established, but the combination of its component elements is a highly artificial one and one need not be surprised if, in due course, it crashed.....His (Sir Sikandar's) chief difficulty, however, is not so much from the Opposition as from its own party—which is a motley crew, of each shade and hue, judged from the political stand-point. Most of the Muslim members, who constitute a clear majority, claim equally to be Unionist and Muslim Leaguers at one and the same time; while the Hindu supporters are similarly Unionists and also members of one or other Hindu organization. It would not be right to express any opinion at this stage of this new kind of experiment in democratic Government, in which almost each member of the governing party owes allegiance to two divergent and possibly conflicting political organizations. At any rate, it seems to me an attempt to introduce into democratic administration the

Dr. Sinha's  
Remarks

spirit of Jekyll-and-Hyde activities which, I thought, was not likely to be appreciated outside the regions of romance....."\*

Not an  
unqualified  
success

The experiment has not been a complete success. as the National Progressive party, representing urban Hindu interests, found itself in an awkward position when the Ministry sought to carry out its rural programme by passing certain contentious measures without caring for its opinions. Under pressure of public opinion in their constituencies, most of the members of the party had to sever their connection with the ministerial party. The Khalsa National party, mostly representing rural interests, however, still continues to support the ministerial party.

Programme  
of the  
Ministry

il Liberty

Coming to the work of the Punjab Ministry, it may be said that the Ministry has been fairly active during the course of the last two years. Briefly stated, the programme of the Ministry is "lightening the burden of the peasantry, tackling the problem of unemployment, development and expansion of nation building activities, uplifting backward classes, including our brethren of the scheduled castes, and the promotion of communal amity and goodwill." Unlike the Congress Governments, the Punjab Cabinet believes in the necessity of "restricting the liberty of individuals without putting them on legal trial." It was, therefore, not prepared to give up special powers for the purpose, but it used them "most sparingly." Restrictions on certain persons were removed. Some martial law prisoners and Babar Akali prisoners were released before the expiry of their terms of imprisonment. Some non-political old, infirm, or ailing prisoners were also released.

Removal of  
corruption  
and tyranny

Promotion of  
communal  
harmony

The Government carried on a campaign for the removal of corruption in public services. To prevent the tyrannies of subordinate officials, orders were issued warning the officials concerned against exacting *begar* from the poor villagers. The Ministry tried to promote communal harmony and goodwill in the Province by taking action against communal agitators, by not standing in the way of Hindu agitation for the giving up of a scheme for the building up of a big abattoir at Lahore Cantonment, by opposing a legislative proposal for the restoration of Shahidganj to Muslims, and by convening a Unity

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\* Reported in the Tribune.

Conference. The Punjab Government takes a special interest in the rural uplift work. It has passed a number of measures for the uplift of the agriculturists, and specially the statutory agriculturists. Among these measures may be mentioned the constitution of Debt Conciliation Boards, issuing of orders for exempting the whole of the fodder crop of an agriculturist debtor from attachment in execution of civil decrees, and the passing of the Punjab Alienation of Land Amendment Act, the Punjab Debtors' Protection Amendment Bill, the Punjab Alienation of Land Second Amendment Bill, the Punjab Restitution of Mortgaged Lands Act, the Punjab Registration of Money-lenders Act, the Punjab Alienation of Land Third Amendment Act, and the Punjab Agricultural Produce Marketing Bill. The Panchayat Bill and the Compulsory Primary Education Bill were also introduced. It is also proposed to introduce the Lahore Corporation Bill. The Punjab Government also felt necessary to sponsor the Punjab Assembly Sergeant-at-Arms Act, which was passed by the Assembly.

Rural Uplift Work

Legislation for the benefit of the agriculturists

Compulsory primary education

Sergeant-at-Arms Act

To deal with different pressing problems, the Government appointed a number of Committees such as the Unemployment Committee, the Land Revenue Committee, the Resources and Retrenchment Committee, and the Education Committee. These Committees have been engaged in their work for a fairly long time, but only the reports of the Unemployment Committee and the Land Revenue Committee have so far been made available.

Appointment of Committees

A good deal of useful departmental work has also been done. Jail administration has been reformed by giving more facilities to the prisoners and by introducing industrial training in jails. Irrigation facilities have been extended. The Haveli Canal Project has been completed, while some other projects are under consideration. More money is being spent on nation-building activities. Educational facilities in rural areas are being extended. The Hon'ble Mian Abdul Hai, the Minister of Education, is taking a special interest in the campaign for mass literacy and adult education. The Government declared itself in favour of initiating a policy of Prohibition on a limited scale, but has not been able to embark on it on account of financial reasons. It has done a very commendable work in the famine-stricken area of the Hissar District by spending about two crores of

Useful Departmental Work

Work for the  
Scheduled  
Castes

Work for the  
Martial  
Classes

Achievement  
of the  
Punjab  
Ministry

i. Communal  
Unity

Rural Legis-  
lation

Cleavage  
between the  
agriculturists  
and the non-  
agriculturists

rupees. In order to help the members of the Scheduled Castes, the Ministry issued circulars forbidding *begar*, and declaring all publicly owned wells open to them. The Punjab Government specially claims to represent the martial classes of the Punjab and wants to protect their position in the Indian army. The Punjab Premier is specially keen on this.

Thus the Punjab Ministry has tried to work along five main lines, *i.e.*, the promotion of inter-communal co-operation and goodwill, offering relief to agriculturist debtors, removal of corruption in public services, improving the condition of the members of the Scheduled Castes, and safeguarding the position of the Punjab in the Indian army. In spite of a well-meaning attempt on the part of the Hon'ble Premier, the Ministry has not been very successful in the promotion of communal unity, and the communal distrust still persists; but it must not be forgotten that the state of affairs in this respect is at least equally bad in other Provinces of India. The Punjab Government has mainly devoted its attention to legislation affording relief to the agriculturist debtors. It is too early to state what will be the effect of the laws, which have been passed, on the prosperity of the Province, but it must be admitted that there is need for such a legislation in the Province. Most of the well-wishers of the Province agree with this legislation on principle but differ as far as the actual provisions of the various Bills are concerned. While on the one hand these provisions are claimed to be conferring great benefit and fulfilling real need, on the other it is feared that they do more harm to the non-agriculturist classes than they do good to the agriculturist classes. While allowance must be made for the natural resentment of the vested interests which are touched by the laws, it may be asserted that these Bills are, to say the least, highly contentious and some of them are at least apparently discriminatory. They have widened the gulf between the agriculturist and the non-agriculturist population in the Province. The matters have been made worse by the speeches of some of the top lights in the political life of the Province. This is not good from the national point of view, and something should be done to close this cleavage in the ranks of the Punjabees, while giving the maximum relief to the poor agriculturists who form the majority of the

population in this Province. It has also been said that these Bills are more for the good of the bigger landlords than of the smaller *zamindars*. So something should be done to protect the interests of the latter as against the former. It may be stated here that some other Provincial Governments have tried to solve the peasant problem by working on both the above-mentioned lines. Something has been done to remove corruption among the public servants, but this is an age-long evil and must take time to go. More should be done for the social, economic and political uplift of the members of the Scheduled Castes. The recruitment in the army concerns the Punjab not merely from the communal and political points of view, but also from the economic point of view. A considerable number of the Punjabees make their living as soldiers in the army and draw a substantial amount of money as salary and pension. If this recruitment is stopped or curtailed, the rural Punjab is bound to suffer economically as unemployment in the rural population will increase. The Punjab Government, and specially the Hon'ble Premier is, therefore, very keen on safeguarding the present position of the Punjab in the army.

Need of relief to small zamindars

<sup>3</sup>Corruption

<sup>4</sup>Scheduled Castes

<sup>5</sup>The position of the Punjab in the army

### The Achievement of Provincial Autonomy.—

After examining the work of all the Provincial Ministries, it may be concluded that the Provincial Autonomy during the last two years, or so, has meant a good deal of beneficent activity in the Provinces. The new responsible governments have tried to do good to the people according to their circumstances and resources. The have-not classes have been particularly attended to, and some improvement is being brought about in their position. The backward classes are coming forward and there is a general improvement and progress. Various misgivings about Provincial Autonomy have proved to be false, and it may be said that on the whole it has worked well. This has been admitted by the Indian National Congress and His Excellency the Viceroy, who is reported to have said in a speech at Peshawar on April 19, 1938 as under :—

Constructive and useful work

Appreciation by His Excellency the Viceroy

".....The first stage of that Constitution has come into being and while there may be ups and downs and while difficulty and anxiety may from time to time arise on a broad view we can claim that the first year of Provincial Autonomy has worked well

and that the provincial legislatures have shown imagination and responsibility in a high degree....."

**Problems of Provincial Autonomy : Provincial Finance.**—The working of Provincial Autonomy has brought certain problems to the fore-front which must be briefly referred to here. The first and the foremost is the problem of Provincial Finance. The problem resolves itself in a simple and yet difficult question, how to find out money for the ever-increasing nation-building activities of the Provincial Ministries when the people do not want to, or perhaps cannot, pay more taxes. The problem baffles the Provincial Finance Ministers because the sources of revenue allotted to the Provinces are inadequate and inelastic. Moreover new taxes are not popular. Further some Provincial Governments are committed to the policy of Prohibition and they have launched the experiment, which is, in certain cases, on a fairly extensive scale. This means a huge loss of revenue and introduction of various financial complications and difficulties. In Bombay, it will ultimately mean the loss of revenue amounting to Rs. 3 crores annually in a total annual income of Rs. 12 crores. The Madras Government has already suffered the loss of about two-thirds of a crore of rupees. The U. P. Government's excise revenue has come down to Rs. 115 lakhs from Rs. 152 lakhs. Thus the Prohibition programme of the Congress Ministries means a big hole in the Provincial Budgets, which is further widened by expenditure on rural uplift. The Congress, however, has deliberately undertaken to follow the policy of Prohibition. It is committed to this policy since 1921 and there is no going back on it when there is opportunity for putting it through. From the economic point of view, it believes that this is—

"the greatest single measure for the economic improvement of the masses. For every pie which the Government are likely to lose by the introduction of Prohibition; they put ten pies in the pockets of the poor. With a stroke of the pen, it increases the income of the poorest classes and enables them to have necessities, without which they had to go previously, because the largest portion of the workers' wages found their way into the grog shop."

Moreover the Congress does not regard this question merely from the economic point of view ; for it, it is more a moral issue than an economic one. Thus the Congress is determined to see this reform through. In spite of gloomy forebodings and determined

Provincial  
sources of  
revenue  
inadequate  
and inelastic

The Policy  
of  
Prohibition

A big hole  
in the  
Provincial  
Budgets

The views  
of the  
Congress

opposition from certain sections, the experiment is being tried on an extensive scale in most of the Provinces under the Congress rule. The Bombay Government, however, leads in this respect. From August 1st, 1939, it has declared "dry" the whole Bombay City and suburbs, covering an area of over two hundred square miles with a population of over one and a half million, consisting of twenty-five different nationalities. This is a great and daring experiment, and its success will be watched with anxious interest all over India, and perhaps all over the world.

A great and daring experiment

This admittedly complicates the financial position in the Provinces. The budgets must be balanced. This can only be done by devising new taxes. The Madras Government has levied a turn-over tax. The Bombay Government has widened the scope of the Sales Tax and has in addition levied a Property Tax. The U. P. Government has hit upon a new tax, the Employment Tax, which will be paid by people with salaried incomes. These taxes are frankly unpopular and have made the Congress Governments unpopular with certain sections of the people.

New taxes-

Even apart from the effects of the policy of Prohibition, the problem of Provincial Finance is pressing. Some welcome relief has been given to the Provinces by the distribution of their share of the Income-tax under the provisions of the Act. It was not expected that money would be immediately available for distribution among the Provinces, but the unexpected happened. Although large calls were made on the Central Exchequer, such as a net loss of Rs. 2½ crores of rupees on account of the separation of Burma, about a crore of rupees on account of the cancellation of certain Provincial debts and consolidation of the remainder at a lower rate of interest, Rs. 56 lakhs on account of additional grants-in-aid to the deficit Provinces, and Rs. 54 lakhs on account of the enhanced payments from the proceeds of the Jute Duty, yet on account of a welcome improvement in Railway revenues, it became possible to distribute a part of the receipts from Income-tax to the Provinces. In the revised estimates for 1937-38, it was assumed that the sum available for distribution among the Provinces would be Rs. 138 lakhs, but later on it was feared that railway receipts would come down

Distribution of Income tax Proceeds

1937-38



1938-39

and so Rs. 125 lakhs were actually distributed. At the end of the year, however, the actual balance available for distribution turned out to be Rs. 163 lakhs. The additional Rs. 38 lakhs were carried forward in the same account. In the Budget estimates for 1938-39, the sum expected to be distributed among the Provinces was Rs. 128 lakhs; but on account of a fall in the contribution from the Railway revenue to Central revenue, the actual amount payable to the Provinces came out to be Rs. 1,12 lakhs. This with Rs. 38 lakhs of the last year made the total amount available for distribution to be Rs. 150 lakhs. For the year 1939-40, the sum available for distribution is estimated to be Rs. 178 lakhs.

1939-40

Need  
for  
further  
help

Thus a share from the Income-tax proceeds is a very welcome help to the Provinces, but this cannot satisfy them as it is not adequate to meet their pressing needs. The problem, therefore, remains, and something must be done in this direction in order to take out the Provincial Governments from a tight corner. This can be done by rationalizing expenditure of the Central Government, reducing the huge expenditure on defence, if, of course, there is no danger to India from war, thereby releasing more sources of revenue to the Provinces.

Working of  
the Gentle-  
man's Agree-  
ment

**The Governors and the Ministers.**—After finance may be taken up the relations between the Provincial Governors and the Provincial Ministries and the Legislatures. As has been stated before, a strong objection was taken to the Special Powers vested in the Governors under the Act, and a sort of assurance was demanded that those powers would not be exercised by the Governors in connection with the constitutional activities of the Ministers. This resulted in a sort of Gentleman's Agreement to which reference has already been made. It may be said that on the whole the Agreement has worked well and the parties to the Agreement have played their part honourably. Generally speaking, the Governors allowed their Ministers to carry on their programmes without any interference on their part. They did not use their discretion and individual judgment against the advice of the Ministers. As far as it is known, no Ordinance was issued against the advice of the Ministers, though some Ordinances—two in Bengal and one in Madras—were issued on the advice of the Ministries concerned. In Assam, before the advent of the Congress



Government, the Governor used his Special Powers for certifying as essential expenditure salaries of the establishments of the Commissioners against the expressed wishes of the Legislative Assembly. In the North-West Frontier Province, the Tehri Bills, which were passed by the Assembly, were sent back by the Governor with certain amendments. For a time, there was a danger of this resulting in a ministerial crisis. The Congress High Command, however, decided otherwise, and the Assembly amended the measure as desired by the Governor. The latter also refused his sanction to the repeal of Section 124-A of the Indian Penal Code, but this also did not result in a crisis. On the whole the relations between the Legislatures and the Governors have also been good. At least no political crisis, resulting in re-election of any of the Assemblies, has occurred.

Relations  
with the  
Legislatures

Yet the course of Provincial Autonomy has not been entirely free from political crises. There was a crisis in the United Provinces and Bihar\* on the issue of release of political prisoners, which resulted in the resignation of the Congress Ministries. In Orissa†, a ministerial crisis arose on the appointment of an I.C.S. officer subordinate to the Ministers as the Governor of the Province in a leave vacancy. In both the cases the parties did not take up an impossible attitude and therefore the crises were ended without producing serious constitutional deadlocks. In the first instance, there was a compromise solution, and in the second case the permanent incumbent to the office of the Governor got his leave cancelled and thus ended the crisis. It may, therefore, be concluded that the parties are not deliberately trying to create crises. There is no attempt on the part of the Congress Ministries to wreck the Constitution, while there is no desire on the part of the Governors to stand in the way of the day to day functioning of the administrations on the lines desired by the Ministries.

Political  
Crises

In U. P. and  
Bihar

In Orissa

No attempt  
to wreck the  
Constitution

**The Legislatures.**—The Legislatures, on the whole, have also functioned well. They have shown a surprising sense of responsibility and aptitude to carry through programmes of reforms. With certain exceptions, the Members have behaved well and have tried to understand the working of the parliamentary

Surprising  
sense of res-  
ponsibility

\* See p. 142. † See p. 134.

system of government. This, however, does not mean that there were no scenes in the Legislatures. The Assembly of the Punjab specially distinguished itself in this respect so that it was considered necessary to pass a Sergeant-at-Arms Bill, providing for the appointment of a Sergeant-at-Arms to remove members from the House at the discretion of the Speaker.

**Party Changes.**—There occurred a number of changes in the composition of the parties resulting in certain cases in ministerial changes. In the Punjab Assembly, some members have changed seats from the Treasury Benches to the Opposition Benches though this has not resulted in a ministerial crisis. In Bengal, a number of members changed sides so that the Huq Government was left in a precarious condition. In Assam, the same thing happened, which resulted in the establishment of a Congress Coalition Government in the Province. In the North-West Frontier Province Legislature, similar changes also resulted in the establishment of a Congress Government. In the Sind Legislature, there were, perhaps, more changes than anywhere else, which resulted in a number of ministerial changes. It may, therefore, be concluded that the fear that the composition of the Provincial Legislatures is such that it will not be possible to have stable Ministries has proved to be real in certain Provinces while it has proved to be false in others. In the Provinces of Madras, Bombay, Bihar, Orissa, United Provinces, Central Provinces and Berar, and the Punjab, the ministerial parties have got solid majorities and therefore the Ministries enjoy a strong position. In these Provinces, therefore, there have been few ministerial changes under pressure of the Opposition, though there have been some changes on account of internal causes. This happened especially in Central Provinces and Berar where an Hon'ble Minister, Mr. Sharif, had to resign because he was found guilty of a serious error of judgment, and where the Premier, Dr. Khare\*, had to go because he was considered guilty of indiscipline by the Congress High Command to which he owed allegiance. In the United Provinces, as well, Mr. Peayare Lal made way for Mr. Sampurnanand. In the remaining Provinces of Bengal, Assam, Sind, and the North-

\* See p. 140.

West Frontier Province, the position of the ministerial parties has never been very strong and hence there have been a number of ministerial changes. In Bengal, the Government of Hon'ble Mr. Fazal-ul-Haq commands a precarious majority, though the no-confidence motion against it failed. In Assam, the Saadullah Government had to resign, and the Congress Coalition Government under Hon'ble Mr. Gopinath Bordoloi came in power. The latter has also got a bare majority though it survived a no-confidence motion. In Sind, the Ministry of Khan Bahadur Allah Bakhsh had a chequered career with a changing following and is even now not on very sound footing. In the North-West Frontier Province, Sir Abdul Qayum's Ministry was defeated giving place to a Congress Government under Dr. Khan Sahib. The latter depends for its majority on the support of its allies and therefore its position is not as strong as that of some other Congress Ministries.

Bengal

Assam

Sind

North-West  
Frontier  
Province

### The Ministerial Parties and the Opposition Parties.—

Another important issue brought to the surface by the working of the Provincial Autonomy is the relation of the ministerial parties with the opposition parties in the various Provincial Legislatures. It is rather unfortunate that these relations have not been happy, which shows that our legislators do not understand the essentials of the working of the parliamentary system of government and specially the real and true functions of the Opposition in the Legislature. On the one hand, it has been seen that in the Legislatures where the ministerial parties command overwhelming majorities and the Opposition is very weak, proper attention has not, sometimes, been paid to the views and interests of the Opposition minority and even steam-roller methods have been used in order to carry out the official programmes. This is not right because it produces feelings of distrust, disappointment and even resentment among the members of the Opposition minority in the House. The last-mentioned lose all sense of responsibility and fairness and begin to create disaffection against the Ministry by clouding of issues. In India, on account of the system of election and other reasons the party cleavage generally is on communal lines. Where the Government is preponderantly Hindu, the Opposition is preponderantly Muslim, and *vice versa*. The absence of proper treatment of the members of the Opposition in the House and political disappointments have

Not very  
happy rela-  
tions

Proper res-  
pect not  
shown to  
the views of  
the Opposi-  
tion

Raising of  
Communal  
Issues

Duty of the  
Ministerial  
Parties

The true  
of the  
Opposition

No  
hankering  
after office

Office  
means to  
an end

Views of  
Hon'ble Mr.  
Sri Krishna  
Sinha

often been given communal colour so as to poison the atmosphere both inside and outside the House. Thus the ministerial parties must understand that the Opposition has to play an important part in the deliberations of the House. It should be properly treated and allowed a proper voice in the deliberations of the House. Attempt should also be made to consult the Opposition on important legislative measures and matters of policy so as to resolve the differences to minimum thus avoiding unnecessary unpleasantness. This, however, cannot be done when there is a difference of principles and ideologies.

On the other hand, the Opposition should also understand its true function. It is certainly in the House to oppose the party in power and to occupy the latter's place if it is able to reduce the latter's majority to minority. This, however, cannot be the only object of the Opposition. It is in the House as much to serve the national cause as the ministerial party, and if it can do that out of office better than in office, it must not hanker after office. Its more important and useful function is to see that the Government does not go wrong, and to press for the adoption of its own programme by the House. It must give co-operation to the Government when the national interest demands that. As long as it is able to achieve this, it is performing its function well. If, on the other hand, it finds that there are fundamental differences between it and the Government and that the latter is not amenable to reason, it must try to reduce the Government strength so as to assume the responsibility for running the government not with the idea of satisfaction of personal ambition, but with the idea of service. If the experiment of self-government is to succeed in India, it must be very clearly understood that the ministerial office is not an end by itself but is a means to an end, which is the service of the nation. The party in power must be ready to leave office whenever the proper occasion for it arises. It must not try to keep in by means, fair or foul, thus retarding the constitutional advance of the country. Hon'ble Mr. Sri Krishna Sinha, the Premier of Bihar, gave expression to similar ideas in a speech\* delivered at Patna on August 17, 1938. He stated :—

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\* Reported in the *Tribune*, dated 19th August, 1938.

"We all recognize that while a democratic form of Government, such as the one we are trying to establish in our country, has generally to be conducted on party lines, yet it is essential that in the Legislature there should be an underlying fundamental unity of purpose between the Government and the Opposition; and though, in our every day work, it is the duty of the Opposition to oppose the measures of Government, by means of fair and remarkable criticism, still, in times of storm and stress, all parties should combine in the larger interest of the State."

Here is another piece of sound advice by His Excellency Sir George Cunningham, the Governor of the North-West Frontier Province. While performing the opening ceremony of the new Assembly Chamber, His Excellency said on March 17, 1939 as under:—

".....Healthy party rivalry is a stimulant both to statesmanship and to good administration. But some things should be above party politics, not because they belong to no party, but because they are common to the interests of all parties and of the whole people. The peace and orderly government of the province, the equality of treatment for all classes, the maintenance of impartial and contented public services are the concern of all, of parties in power and parties in opposition. If they are to be brought in issue between parties at all, this must be done on questions of wide principle, and not for purposes of temporary tactical advantage....."

"Even when party rivalry is acute and the struggle for votes is tense, the canons of Parliamentary practice are to be respected. Criticism that is merely destructive and opposes simply for opposition's sake is an impediment and not—as it should rightly be—a stimulant to the progress we all desire. On the side of the party in power there must be readiness to seek, on the side of the opposition readiness to give, co-operation. Democracy has always made this demand of its adherents, and the history of many countries tells us how often, in times of anxiety and stress, this demand has been loyally fulfilled....."

If this is done, much unnecessary unpleasantness will be avoided and maximum good will be done to the country.

**No Political Parties.**—Unfortunately, parties, organized on true political or economic lines, have not as yet risen in the country. The Congress is perhaps the only organized all-India political party, but even that is distrusted by a section of the Mussalmans. The Muslim League and the Hindu Maha Sabha parties are frankly communal, and therefore, cannot inspire universal confidence. Even such parties, as the Unionist in the Punjab and Proja groups in Bengal, which are professedly organized on economic lines, are preponderantly communal in composition. Thus the parties are organized or are believed to be organized on communal lines, though there is clouding of issues. These parties,

His  
Excellency  
the  
Governor  
of North-  
West  
Frontier  
Province  
on the  
functions  
of the  
Parties

Communal  
Parties

No  
work on  
national  
lines

with the possible exception of the Congress, more often than not, do not work on national lines, but try to secure communal or sectional interests and therefore cause a good deal of political, economic and communal discontent in the country. Democratic self-government of the parliamentary type can only function through political parties, and therefore in our country the experiment is not an unqualified success, as it should be.

Intensifica-  
tion of the  
Problem

**The Communal Problem.**—As a matter of fact, the working of Provincial Autonomy has intensified the communal differences or the minority problem in the country. The most important aspect of the problem is the Hindu-Muslim question. There is mutual distrust between the communities which keeps them apart. Both the communities do not like to be dominated by each other, and hence are apprehensive of the designs of each other. The communal-minded members of the majority community think that the members of the minority community do not regard India as their home, are not prepared to do any sacrifice in the cause of her freedom, and are always thinking of apportioning India into Hindu India and Muslim India, thus standing in the way of the evolution of the united Indian nation. On the other hand, the communal-minded members of the minority community think that the majority community is aiming at its complete absorption politically and culturally. It, therefore, demands the recognition of certain rights. It is not satisfied by the working of the safeguards for minority rights in the Constitution Act, and therefore demands the provision of further safeguards. Some have gone so far as to say that from the Muslim point of view the Constitution has proved a failure in the Provinces. For instance, Sir Muhammad Yakub in a statement issued on July 5, 1939 wrote as under:—

Views of the  
Majority  
Community

Views of the  
Minority  
Community

Safeguards  
for Minority  
rights

“Muslims of all India, of all shades of political opinion, are agreed on this point that the present constitution, so far as the experience of autonomy in the provinces goes, has proved not only a failure but distinctly disadvantageous and derogatory to the Muslim interests in India.....”

Failure of  
the Congress

Thus the communalists on both ends stand poles asunder, and cannot come nearer. The Congress, which tries to solve the problem, has so far failed in its efforts. On the other hand, the functioning of the Provincial Governments on wrong lines is at least partly responsible for intensifying the communal



problem, both inside and outside the Legislature. The mutual distrust has increased to such an extent that every measure of the Government in power is judged from the communal point of view. There is no attempt to consider it from the national view point. Nobody cares to understand the view point of the other party, and there is no attempt at compromise. As the Government majorities in most of the Provinces—generally dominated by Hindu or Muslim members—are unalterable by ordinary constitutional methods, therefore even on the slightest provocation there is a talk of direct action and satyagraha. When this opposition starts, even if it be for economic or political reasons, it soon assumes a communal colour and excites communal passions. This endangers public peace and prosperity. This happened in the Central Provinces and Berar, where the Muslim League started *satyagraha* in order to give expression to its opposition to the *Vidya Mandir* Scheme of education. In Madras, there was a *satyagraha* against the introduction of compulsory teaching of Hindi in schools. In the Punjab, the Agrarian Bills controversy assumed a communal colour. In Bengal, the no-confidence motion against the Ministry was given a communal colour. There was also a talk of direct action regarding the question of the release of political prisoners in that Province. In the United Provinces, the *Mahade-Sahaba versus Tabarra* controversy, involving direct action by the parties concerned, is another form of the malady of communal distrust and sectarian intolerance. In Bombay, the levy of the Property Tax to finance the Prohibition scheme was given communal colour. Thus the Provincial Autonomy has fed the demon of communalism. It is getting strong and clogs the way to political progress of the country. It must be killed, if the country is to be saved.

Manifesta-  
tion of  
communal  
distrust

This can only be done by finding out some permanent solution of the minority problem in the country. The majorities in different Provinces must revise their attitude towards minorities so as to win over their confidence and trust. On the other hand, the minorities themselves should begin to examine if there is anything wrong in their attitude and way of thinking. It has been urged, specially on behalf of the Muslim minority, that the safeguards—the Governor's Special Responsibility, the separate

Need for  
solution

The failure  
of communal  
safeguards

communal electorates with weightage and special representation, the reservation of percentages in the Public Services, etc.,—incorporated in the Constitution to protect its interests have failed to achieve their end. There is, therefore, a demand for further safeguards. But mere piling up of the safeguards cannot and will not solve the problem. Something else is necessary; and that is mutual understanding and trust. Unless that is created, the minority problem will remain in one form or another in spite of a heap of safeguards. On this side lies the permanent solution of the problem. When the other method has failed, this one should be tried.

The solution

Fears  
falsified

Resignation  
of I.C.S. men

Complaints  
regarding  
lack of  
co-operation

Participation  
in party  
squabbles

Need for  
regarding  
the influence  
and salaries  
of the public  
servants

**The Public Services.**—On the whole the Public Services have played their part well under Provincial Autonomy, thus falsifying the fears entertained about them. They have co-operated with their political masters in carrying out their new policies and revolutionary reforms. They seem to have adapted themselves to the new conditions set up by the new Constitution. It must be admitted, however, that this has not happened without some difficulty. Some I.C.S. men found it difficult to pull on under the new conditions and therefore resigned; but their number is surprisingly small. Moreover, in certain Provinces, notably in North-West Frontier Province and Assam, complaints against some members of the Civil Service about lack of co-operation with the Governments of the day have also been made. It is not possible to say how far these complaints are true; but if they are based on fact, it is very unfortunate. The Services must be made to realize that it is their foremost duty to give willing co-operation to and carry out the policy of the Government of the day. They cannot have any policy of their own, and must regard the policy of the Government in power as their own.

In certain cases high officials are believed to have taken sides specially in helping to keep in or turn out of office a particular party. This must be stopped because this places the Ministers under obligation to their subordinates and encourages corruption and indiscipline. The public servants, therefore, must be kept apart from party squabbles and should observe strict neutrality.

It is clear that the Services still dominate the Provincial administrations. This is due to the



privileged position assured to them under the Act. There is a need for a change in this direction. Further, the Services still consume a considerable part of the Provincial Budgets in disproportionately high salaries. A concerted attempt must be made to reduce them so as to find more money for some other useful work. There is also a great scope for change in the attitude and tone of the Services towards their real masters, the masses.

**Provincialism.**—The working of Provincial Autonomy tends to intensify "Provincialism." The danger is inherent in all Federations; but if it is not checked in time, it produces undesirable results. The danger is very real in the case of our country which is not yet a strong, and unified nation. If Provincial jealousies, differences, and interests are allowed free scope, there will be a lot of waste of energy and resources. This will retard progress. Moreover, instead of becoming a unified state, the country will become a congeries of states with conflicting interests.

This danger has made some patriotic people think furiously. Mr. Jamshedji Mehta in a letter to Mahatma Gandhi wrote :—

"After the introduction of provincial autonomy one is pained to observe the growth of provincial exclusiveness and jealousies in matters big or trivial. I often wonder if provincial autonomy has not come upon us as a curse rather than a blessing. Instead of the nationalistic spirit having increased, provincial exclusiveness seems to have flourished. Before autonomy my country used to mean India. Now it means "my province."

Mr.  
Jamshedji  
Mehta's  
views

Commenting on this, Mahatma Gandhi observed—

".....Provincialism of a healthy type there is, and always will be. There is no meaning in having separate provinces, if there are no differences, though healthy, between them. But our provincialism must never be narrow or exclusive. It should be conducive to the interest of the whole community, of which the provinces are but parts. They may be linked to tributaries of a mighty river. The tributaries promote its mightiness. Their strength and purity will be reflected in the majestic stream.

It must be thus with the provinces. Everything that the provinces do must be for the glory of the whole. There is no room for exclusiveness and jealousy between province and province, unless India is to be dismembered into warring countries, each living for itself and if possible at the expense of the rest. The Congress will have lived in vain if such a calamity descends upon the country....."

Thus in the interest of united nationhood, this tendency must be checked, and inter-provincial collaboration and co-operation must be encouraged.

The feeling of "Provincialism" has also taken the shape of a demand of certain distinct linguistic

Mahatma  
Gandhi's  
Remarks

Creation of  
Provinces on  
linguistic  
basis

groups in some bilingual Provinces, like Bombay and Madras, to seek opportunities of self-expression and self-governance by separating themselves from their respective Provinces. The question requires mature consideration and cannot be easily disposed of one way or the other. It is true that the present day Provinces of India are relics of history and do not follow any rational lines of division. Again it may be admitted that the division of Provinces on linguistic lines is natural enough. But there are other questions, like that of finance and administrative convenience, involved, which must be carefully studied before arriving at a solution. The Indian National Congress has, generally speaking, expressed itself in favour of the proposal, but the British Government seems to be opposed to it.

#### The Provincial Parties and their High Commands.—

The Muslim  
League

The Con-  
gress

Need for  
discipline  
and control

The Parlia-  
mentary  
Sub-Com-  
mittee

Another issue, that has often claimed the attention of the students of the working of Provincial Autonomy, is the relations of the Provincial parties with their High Commands. There are two all-India political parties, the Muslim League and the Congress, which claim allegiance of political parties in the Provincial Legislatures. The Muslim League claims the allegiance of some weak Opposition parties in the Congress-governed Provinces and in Sind, and the Congress claims the allegiance of the ministerial parties in Bengal and the Punjab. It is observed that the control of the All-India Muslim League over these parties is not very effective or strict, and the Provincial parties, in actual effect, can do whatever they like. The case of the Congress is different. It claims the allegiance of eight out of eleven Provincial Ministries, and in the remaining three Provinces commands the allegiance of important Opposition groups. Moreover, it is an effective all-India organization, with an all-India programme of reforms and reconstruction. It aims at attaining complete freedom for India, and has not yet stopped its fight against British imperialism. It has not even finally given up the policy of ending the Constitution Act under which it is running the Provincial administrations. Under the circumstances, it cannot allow the Provincial Ministries to go their own way but has to enforce discipline in the interest of uniformity and in order to check fissiparous tendencies. It, therefore, maintains a Parliamentary Sub-Committee to control the Congress Ministries.

There is no denying the fact that this control is absolutely essential, if the Congress is to remain an all-India body. Incidentally this control from one place assures uniformity of policy and interests among at least eight Provinces, and thus tends to preserve the unity of India safeguarding it against narrow provincialism. While this is right, it has been asserted that the control of the Parliamentary Sub-Committee is dictatorial and that it does not allow sufficient liberty to the Ministries to manage their own affairs. The question came before the public as a result of the Khare episode.\* This has been denied on behalf of the Committee which maintains that it exists to guide, co-ordinate, and control the Provincial Ministries and not to stifle their liberty of action. It is not possible to take sides on the point; it must suffice to say that the relations between the Committee, which is itself subject to the Congress Working Committee, and the Provincial Ministries should be such that the initiative of the latter must not be killed. There should only be a general supervision in the interest of uniformity and co-ordination, rather than control so that the Ministries may be controlled by the parties in the Legislatures.

Advantages.

Only a general supervision required

#### **The Ministries and the Congress Organizations.—**

Another question has also arisen in respect of the mutual relations of the Ministries, the Parliamentary parties, and the Congress organizations in the Provinces. It is clear that if the Congress Committees interfere in the day to day activities of the Ministries, no work will be possible. The Ministries can only work in general co-operation and consultation with them. The All-India Congress Committee has recently adopted a resolution to that effect.

No interference in the day to day activities.

**The Unsolved Problems.**—Thus works Provincial Autonomy. There are obstacles and difficulties, old and new, which beset the path of the constitutional advance; yet our Ministers are making the best of a bad bargain and trying to get as much out of the authority transferred to them as is possible under the circumstances. Misgivings and evil forebodings about the success of the responsible Ministries have been falsified. The Congressmen, who were new to the task of governance, have proved their mettle.

Misgivings falsified

\* See p. 140.

Pt. Jawahar  
Lal on the  
work of the  
Congress  
Ministers

According to Pt. Jawahar Lal Nehru, the Congress Ministers—

"have worked faithfully and unceasingly for India and for the cause for which the Congress has laboured, and if the success that has come to them has not been as great as we hoped, it is foolish and uncharitable to cast the blame on them. Their achievement has, indeed, been considerable and worthy of pride."\*

Much  
remains to  
be done

The same may be said about some of the non-Congress Ministers. Yet it must be admitted that much remains to be done. Unemployment among educated and uneducated people is still there in the worst possible form. Vast numbers of people in both rural and urban areas are still illiterate and ignorant. Rural uplift movements have yet only touched the fringe of the problem. Our villagers lead most miserable lives, socially as well as economically. The Scheduled Castes are still economically and socially backward. Economically the condition of the masses is simply unspeakable. Not much has so far been done to establish key industries and to improve the general industrial condition of the country. On the administrative side, the outlook of the Services is not yet entirely changed. Lastly, practically nothing has been done to give military training to the Indian youth so as to give him self-confidence and enable him to stand in the defence of his country. In the present tense situation in the world, this amounts to almost criminal negligence.

Handicaps of  
the Ministers

**Limitations of Provincial Autonomy.**—Thus the Augean stables in India have only partially been cleared, and yet the Provincial Ministries have begun to feel a little helpless on account of the limitations of Provincial Autonomy. It should be remembered that the powers and resources of the Ministries are not unlimited. They work under various handicaps. Their powers rest more on the Gentleman's Agreement than on the Statute. Constitutionally the Governor is still the actual head of the administration in the Province. He can preside over the meetings of the Cabinet. His powers of discretion and individual judgment are still there and can be exercised, if necessary, though that may lead to a ministerial crisis. He has a separate establishment of his own. The Secretary of State and the Governor-General still stand in the background. The Services are largely

\* Tribune, April 1, 1939.

beyond the reach of the Ministers. A large amount of expenditure is fixed, because it is charged on the revenues of the Provinces. While the sources of revenue are insufficient and inelastic, all the paraphernalia of the costly administration has to be maintained, though it means starving the beneficent departments. Above all, the demon of communalism, which in its present form was brought into being by the communal representation, is kept alive and nourished by politicians with unsatisfied political ambitions. On account of all this the Provincial Ministries seem to feel helpless.

**The Future.** — This tends to create the impression that the Provincial Autonomy is rapidly exhausting its possibilities. The impression, if allowed to gain ground, is likely to produce unfortunate results. It may lead to political discontent and abandonment of the constitutional experiment altogether. Something must, therefore, be done immediately to remove this impression and to re-establish hope among the impatient. This can only be done if the bounds of Provincial Autonomy are expanded by the removal of limitations. Specially something must immediately be done to increase the financial resources of the Provinces. The responsible Ministers should also be allowed more freedom of action to give a practical shape to their revolutionary schemes.

Expansion of  
the scope of  
Provincial  
Autonomy

A word may also be addressed to those who are getting impatient. They must try to understand that the work of reform, in order to be permanent, must be slow. Moreover the mischief of centuries cannot be undone in days or even months; it must take at least years. They must not, therefore, get too restive, because this might force the hands of the Ministries and precipitate crises. This cannot be of any good to the country because this would mean the failure of the constitutional machinery, through which some good is being done and more is likely to be done to the masses. If the Indian Revolution is to work itself out through a series of evolutionary changes, the constitutional experiment, which has been undertaken, must not be allowed to fail.

Need for  
Patience

Need for  
making the  
Constitution-  
al Experi-  
ment a  
success

## CHAPTER XXII

### EPILOGUE

#### The Present and the Future

Tha Nature of the Indian Federation, Structure of the Indian Federation ; Shortcomings of the Scheme ; No Provision for Future Growth ; The Unwanted Constitution ; New trend in Muslim Politics ; Making Federation Safe for the Muslims ; The Muslim Alternative Schemes ; The Pakistan Scheme ; The Confederation of India : Dr. Abdul Latif's Scheme ; The Zones ; The Hindu Zones ; Other Minorities ; Transitional Period ; Safeguards for the Muslims ; Merits of the Scheme ; Criticism ; Mr. Asadulla's Amended Scheme ; Sir Sikandar Hyat Khan's Scheme for the Federation of India ; Division into Zones ; The Regional Legislature ; The Federal Legislature ; The Federal Executive Advisory Committees for Defence and External Affairs ; The Federal Railway Authority ; Safeguards ; Composition of the Indian Army ; Criticism ; the Merits of the Official Scheme ; Demand for Amendments ; Wrecking the Constitution ; Need for Constitutional Conventions ; the Opposition of the Muslim League ; the Opposition of the Princes ; Need for Immediate Action ; the Present Position ; Suspension of the Work regarding Federation.

**The Nature of Indian Federation :—**The scheme of the Federation of India as adumbrated in the Government of India Act 1935 is a "unique piece of political architecture." It does not follow any prevalent type of federalism, and has no parallel in history. This is due to the fact that the scheme is the result of action and reaction of various forces and interests—British Imperialism, Indian State Autocracy, Indian Sectionalism and Indian Democratic Nationalism. All these interests emphasized their needs and tried to secure them at the Round Table Conference. Thus the result was a hybrid product lacking in design and pattern. Instead of having a proper equipoise of forces and interests, the scheme reflects the influence and power of each interest mentioned above.

1. British Imperialism, represented by the strong man of the British Cabinet, Sir Samuel Hoare, was the strongest influence and worked for safeguarding British interests in India as well as conceding as little as possible to Indian Nationalism.
2. Indian States Autocracy, represented by the Indian Princes and their advisers and specially by Sir Akbar Hydari, was interested in safeguarding the prevalent mediæval and feudal conditions in the States particularly against the onrush of modern democratic

A Unique  
piece of  
political  
architecture

Interplay of  
different  
interests

ideas from the British Indian Provinces. It demanded as great a voice as could be possible to secure for the settlement of issues in the future Federation so as to dilute British Indian Democracy. Indian Sectionalism, represented by Sir Muhammad Shafi, Dr. Ambedkar, etc., was more interested in safeguarding sectional interests under the new conditions by demanding separate electorates, weightages, and other safeguards at the cost of the majority community, the Hindus, than in seeking a real democratic advance for the whole country. It was only Democratic Nationalism, represented by Sir Tej Bahadur Sapru, that was really interested in a genuine constitutional advance for the country towards Dominion Status. It had to work against heavy odds, represented by a virtual alliance of the other three interests. Being alone and weak, it had to make sacrifices and concessions to others and was thankful for what little it was able to achieve. But even this little is so much hedged in by safeguards that in its final form the Constitution is ultra-conservative.

Ultra-conservative Constitution

All Constitutions must be based on the realities of the situation, and the Indian Constitution can be no exception. According to Lord Lothian,

Realities of the situation

"The new Act, with all its defects and anomalies, corresponds far more closely to the present day realities in India than its Indian critics are willing to admit."\*

But it is clear to all discerning eyes that for the purpose of the new Constitution, these realities were magnified out of all proportion to their importance in order to reduce the value of another reality—the desire of the Indian Nation to achieve Swaraj. The framers, therefore, started wrongly and could not go on the right road to reach the right goal. They spent their intelligence and ingenuity in building barricades on the very road on which they ought to have travelled. The result, in the words of Dr. B. R. Ambedkar, Leader of the Independent Labour Party of Bombay, is that the Federal Constitution, which they forged, is "wrong in its conception and wrong in its basis."<sup>†</sup> Such a scheme cannot commend itself to progressive nationalist opinion in the country.

Wrong in conception and wrong in its basis

\* Reuter's message from London.

<sup>†</sup> Statement reported in the *Tribune*, dated July, 21, 1938.



A Federation  
of British  
India and  
the Indian  
States

No political  
homogeneity  
or uniformity

Conflict  
between  
autocracy  
and  
democracy

**Structure of the Indian Federation.**—From the structural point of view, the Federation of India is essentially the result of the working of two principles, the territorial or regional Federation and social or communal Federation. From the former point of view, it is a Federation of British India, comprising British Indian Provinces, and the so called Indian India, comprising Indian States. The Federation, however, is not between British India as one single unit and Indian India as another unit. This was considered but was rejected as this would have kept the two units perpetually in conflict within the Federation. The Federation, therefore, is between the individual British Indian Provinces and the individual States, however big or small they may be. It has nothing to do with the internal autonomy of the units and specially the States, except in respect of the sphere of administration handed over to Federal control. There is no attempt at assuring political homogeneity and uniformity among the federating units. Thus the mediæval feudalism and autocracy of the Indian States have been allied to modern nationalism and democracy of the British Indian Provinces. Moreover while the representatives of the States are to be nominees of the Princes, the representatives of British India are to be elected by the Provincial Legislatures. The Federation, therefore, is to consist of disparate elements and is

"an ill-assorted group of states and provinces, differing widely in their status and forms of government, and in the general complexion of the population inhabiting them."\*

Political necessity has brought together two strange bed-fellows. How they will pull on remains to be seen. Which will triumph—the autocracy of the States or the democracy of British India? Will there be a perpetual struggle between the two? Will the autocracy of the States prove only a balancing factor by diluting the strong dose of British Indian democracy, or will it try to retard all progress by combining itself with the reactionary element from British India? All these are questions which agitate the minds of Indians, but cannot be answered immediately. Only time can furnish answers to them. The States are professedly coming in the Federation of India "to inspire England with sufficient confidence to entrust to India the management of her own affairs" by functioning as a balancing and

\*Punnaiah, K. V. : India as a Federation, p. 193.



stabilising factor in the future Federal Legislature. On the other hand, British India thinks that they are coming in to safeguard their own autocracy and to serve the interests of British imperialism. The dice is certainly loaded against British India. The States have been given additional weightage in the Federal Legislature. Although their aggregate population forms 23% of the population of India, yet they have been given 33% representation in the Lower Federal House, and 40% in the Upper Federal House. The transfer of a small number of subjects to Federal control, which may differ in the case of individual States, the power of carrying out Federal laws through their own agency, the power to discuss and determine purely British Indian questions such as the rate of Income-tax while the representatives of British India are debarred from discussing questions not ceded to Federal control, the safeguards protecting the rights and dignity of the Indian Princes, and lastly the recognition that *paramountcy* in respect of the States vests and shall continue to vest with the British Crown are calculated to strengthen their position *vis-a-vis* British India. It is feared that they will use their influence on the side of reactionary forces. According to Professor Keith,

Favourable position of the States

Effects of the States' entry in the Federation

"India would have secured genuine democracy by a process of showing in the Provinces a capacity to work the Constitution, but as a result of the errors of both British and Indian politicians, a Federal structure is now provided which creates a permanent conservative and even reactionary Central Government and Parliament by calling in the autocratic rulers to nullify the votes of British subjects.....Many of the complications and defects of the Federal Constitution are due to the unnatural comingling of Freedom and Autocracy."

Dr. Keith's views

Mr. Subhas Chandra Bose emphasized the same point when he declared\*—

"The Federation, as conceived in the Government of India Act, is a cunning device of British statesmen to perpetuate the slavery of India by wedding democracy with the feudalism that obtains in most of the Indian States."

This is how British India looks at the position assigned to the Indian States. It is clear that it distrusts the latter and is in turn distrusted. Thus the idea of All-India Federation has not brought the parties a whit nearer than they were before.

Distrust between the Parties

\* Bombay, May 14, 1938.

A Federation  
of Communi-  
ties

Mutual  
Distrust

Concessions  
to Muslim  
pionion

Loss to the  
Majority  
Community

*Reduced to  
practically  
minority*

From the second point of view, the Federation of India is a union between the various communities of India—the Hindus, the Muslims, the Sikhs, the Christians, the Jains, the Parsis, etc. The Hindus form the majority community, while the Muslims form the chief minority community. That there is a distrust between the two is clear to all. Self-seekers and misguided persons on both sides have done everything possible to widen the gulf so that there seems to be developing a difference in outlook, aims, and ideologies. While majority of the Hindus believe in a united India, some of the Muslim statesmen seem to be working for a Muslim India and a Hindu India, which may confederate, if possible. In the Federation, the Muslims are afraid of Hindu domination and of losing their identity. They, therefore, demanded safeguards to protect their interests and to assure that their importance should not reduce. This demand was conceded to a considerable extent. Some new Provinces were created to give them two more Muslim majority Provinces. Although their population is much less, yet they have been given one-third of the total British Indian representation in the Lower Federal House. The Governor-General is vested with the Special Responsibility for the protection of the Minorities. He is instructed in his Instrument of Instructions to see that the representatives of the Minorities are included in the Federal Cabinet. All this was done to assure the Muslim community, but the majority community suffered in the process. The weightage to the States as well as to the Minorities is at the cost of the Hindus, who, though having an overwhelming majority as far as population is concerned, is reduced to a minority as far as their representation in the Federal Legislature is concerned. In the Lower House with a total membership of 375, the member of the representatives of the Indian States will be 125, thus leaving 250 for British India. Out of this 250, the number of General seats, which are virtually Hindu seats is 105, while the Muslim seats are 82. The Council of State will have a total membership of 260. Out of this 104 seats are allotted to the Indian States. Out of the remaining 156 seats, 75 are Hindu seats and 49 Muslim seats. Thus the Hindus have been reduced to a minority in the Houses, though they are in majority outside. Too much stress, however, need not be laid on this point in

the interests of Indian solidarity, but it is rather unfortunate that the Minorities, and specially the Muslim Minority, are even now not satisfied. The Muslims demand further safeguards, specially an increase in the representation in the Federal Legislature. If this demand is conceded, the Hindus will be reduced to the position of a hopeless minority which is certainly against all canons of justice and fair play. Yet the Federation of India, with Hindu majority Provinces and Muslim majority Provinces and a Centre representing all interests and communities and serving as a co-ordinating and unifying link, is an ideal solution of Hindu-Muslim problem.

Ideal solution of Hindu Muslim problem

**Shortcomings of the Scheme.**—The Federal scheme as adumbrated in the Government of India Act, 1935, is full of shortcomings and defects from the point of view of Indian nationalism. It has been assailed on various grounds. To begin with, the sovereignty of the people of India is not recognized.<sup>1</sup> The supremacy of the King-in-Parliament is retained. The theory of the divisibility of the Crown is not applied to India as in the case of the Dominions. In other words India is not under the British Crown alone but is under the British Government—the King-in-Parliament. The authority of the Home Government is to be exercised through a member of the British Cabinet, the Secretary of State for India, except in so far as it is transferred to the people's representatives. The authority and powers of the Secretary of State are still very vast as it is he who<sup>2</sup> is ultimately responsible for the administration of Reserved Departments and Special Responsibilities, for the administration of Special Powers by the Governor-General, and the Governors, and for acting as the guardian deity of the members of the Public Services. The Council of India has been virtually<sup>3</sup> continued in the form of the Advisers. The powers of these Advisers, however, have been reduced so as to make the Secretary of State a virtual dictator in the discharge of his authority, powers, and duties. He thus continues to occupy the position of the Grand Moghal of India. The Secretary of State for<sup>4</sup> India with his present powers, authority, and influence, is a sign of Indian slavery. His presence is galling to Indian self-respect. India cannot be satisfied until this office is abolished or at least its importance is reduced to that of the Secretary of

The Supremacy of the King-in-Parliament

The authority and powers of the Secretary of State for India

the Dominions. It should, however, be remembered that this involves complete transfer of responsibility to the Indian Legislature. As long as there is a partial transfer of responsibility to the Indian Legislature, the control of the Secretary of State for India over the untransferred sphere must continue.

Dyarchy at  
the Centre

5 Coming nearer home, dyarchy that failed in the Provinces, is deliberately installed at the Centre.

Reserved  
subjects

Although the head of the executive will be the Governor-General, yet in essence the executive will be a composite body, made up of the Governor-General and the Ministers. A very important part of the government, comprising the important Departments of Defence, External Affairs, and Ecclesiastical Affairs, is reserved to the discretion of the Governor-General beyond the pale of ministerial advice. There is a further encroachment on the sphere transferred to ministerial control by the formulation of the Special Responsibilities with a very wide range. The powers and authority of the Ministry cover the remaining field, which is very much restricted and narrow as compared with the sphere under the control of the Governor-General.

Powers of  
the Governor-General

The Special  
Responsibilities

As a matter of fact, the Governor-General possesses a vast array of powers in respect of the Reserved Departments, Special Responsibilities, Special Powers, Powers delegated to him by the British Crown not inconsistent with the provisions of the Act, discretionary powers, emergency powers, powers of enacting Governor-General's Acts and issuing Ordinances, prevention of discrimination in the executive sphere against British nationals and goods, providing for appropriations against the wishes of the Legislature, etc. With these powers in his hands, he is the real executive, though not the sole executive. He is entitled to appoint not more than three Counsellors to help him in carrying out his functions. He can also appoint a Financial Adviser for advising him on financial questions.

The Powers  
of the  
Federal  
Ministry

6 The Federal Ministry will not enjoy considerable powers. Whatever powers it possesses by virtue of the provisions in the Act are hedged in with so many safeguards and restrictions that the substance is taken away and the shadow is left behind. While the responsibility before the country and the Legislature will be that of the Ministry, the power to discharge that responsibility will be lacking. Thus it will present

a spectacle of responsibility divorced from power with all its attendant evils.

The Ministry is also expected to be "composite" in the sense that it will contain, as far as possible, 7. representatives of all major communities and the Indian States. Although this is fair from the communal point of view, yet it may not be practicable in actual practice to include all such representatives in the Federal Cabinet. It will stand in the way of the evolution of collective responsibility of the Cabinet. If the latter principle is kept in the foreground, members enjoying confidence of the majority of the members of their respective communities may not be available for inclusion in the Cabinet, as is the case in some of the Provinces. The inclusion of others is likely to cause communal discontent. If, on the other hand, representatives of the various communities are taken in the Cabinet, there cannot be any homogeneity among the members of the Cabinet. In such a case, there cannot be any uniform policy and no important reform is possible.

The 'Composite' character of the Ministry

Moreover, with the composition of the Houses as it is, there is no possibility of any strong and stable Federal Ministry. No party is likely to have an absolute majority in the Legislature. Even the Congress party is not likely to command more than forty per cent. seats in the Legislature and, therefore, cannot hope to command a decisive majority though it may form the single largest party in the House. An alliance between the representatives of other interests—the Indian States, the Muslims, the Europeans, the Anglo-Indians, etc., representing the remaining sixty per cent. can form a coalition government even against the opposition of the Congress. There is, therefore, great likelihood of weak Cabinets and frequent ministerial changes.

No possibility of the formation of a stable Ministry

The position of a progressive Cabinet is further weakened by making it responsible to both Houses. 8 The Upper House, which will represent the vested interests in the country and will not be subject to dissolution, is likely to cast its influence on the side of the slowing down the pace of progress. It is perfectly clear that a progressive Ministry will find it very difficult to pull on with such a House, and yet it depends upon its vote. The Ministry cannot make any appeal to the country against the decisions of this House as it is not subject to dissolution. Indeed "an appeal to the country," even in the case

Responsibility of the Ministry to both the Houses

No possibility of the functioning of a progressive Ministry

of the Lower House, is more or less a misnomer because there is no single electorate spread over the country but a number of electorates, about seventeen in all—Hindu, Muslim, Sikh, Indian Christian, European, Women, Labour, Commerce, etc. Thus there is no likelihood of the functioning of a progressive Federal Ministry. Whatever Ministry might function, it can be effectively controlled by the representative of the British imperialism in his capacity of the Crown Representative by commanding the votes of the nominees of the Indian Princes against it.

The Upper House

The Federal Legislature will be bicameral, comprising the Council of State and the Federal Assembly. Against all precedents, it is the Upper House that is to be directly elected and not the Lower House. But the franchise qualifications are pitched so high that even this House can represent only vested interests in the country. Moreover, it is a permanent body not subject to dissolution, only one-third of its members retiring every third year. As a result of this provision, it is likely to lose contact with the public opinion outside and might become irresponsible to it. The Lower House is to be elected indirectly by the members of the Provincial Legislatures through separate communal electorates. This has been condemned almost unanimously because it is likely to lead to corruption, provincialism in the Federal Legislature, the confusion between the Provincial and the Federal issues, and the lack of contact between the members of the Federal Legislature and their real masters—the people. It is certainly a retrograde and reactionary step.

The Lower House

Indirect Election

Representatives of the States to be nominees of the Princes

These remarks apply only to British Indian representatives and not to the representatives of the Indian States, who are going to be the nominees of the Indian Princes. The Act does not lay down the method of their appointment as it will be the sole concern of the Princes themselves. It has already been mentioned that the States have been given weightage so that their representatives will form 40% of the Upper House and 33½% of the Lower House. In the Lower House the Muslims are allotted one-third of the remaining two-thirds. A few more seats are allotted to some other special interests so that all the Special seats, including the Muslim seats, will be 145 out of 375 or 38½% of the whole House. The General seats number

105 out of 375 or 28% of the whole House. In the Upper House, the number of nominees of the States along with the nominees of the Governor-General will be 110 out of 260 or 42.3%. The Muslims will be 49 out of 260 or 18.8%. Other special interests will claim 20 seats out of 260 or 7.6%. The General Seats will be 81 out of 260 or 31.1%. It will be seen that in the Upper House, the element representing Nominated and Special seats forms 68.7% of the House while in the Lower House it forms 72% of the House. It is clear from this that every attempt is made to reduce the progressive element in the Federal Legislature so as to make it reactionary and conservative in outlook.

Federal  
Legislature  
made  
reactionary

But even to such a Legislature, the powers promised are niggardly. In the first instance, it is not a sovereign law-making body as it derives its powers from an enactment of the British Parliament whose authority to legislate for India is kept intact. It has virtually no constituent powers. Certain subjects of imperial interest are specifically excluded from the competence of the Federal Legislature. Certain other subjects require the previous sanction of the Governor-General for their introduction in the Federal Legislature. The Governor-General can himself enact Acts and Ordinances. He can refuse to give assent to Bills, or can reserve them for the signification of His Majesty's pleasure. His Majesty can disallow even those Acts which have received the assent of the Governor-General. Lastly the Federal Legislature is seriously handicapped by the provisions preventing discriminatory treatment against British companies and British nationals. An additional safeguard in the interest of conservatism is that the powers of the Upper House in respect of supply is almost equal to that of the Lower House.

“

Not a  
sovereign  
law-making  
body

Restrictions  
on the  
powers of  
the Federal  
Legislature

Power of the  
Upper House  
in respect of  
supplies

To such a Legislature is responsible the Executive, or to be more exact, the Ministry. The responsibility extends only to the Transferred Sphere and not to the Reserved Sphere, which includes the important Departments of Defence, External Affairs, and Ecclesiastical Affairs. The Transferred Sphere will be further reduced in extent if the Governor-General decides that the matter under consideration involves any of his Special Responsibilities. To that extent the Central Responsibility is further whittled down. As a matter of fact, with all these

Powers of  
the Respon-  
sible  
Ministry



Central  
Responsibility—halt-  
ing and  
dubious

restrictions, limitations, and safeguards, the Central Responsibility is halting and dubious. It is, indeed, a misnomer. All this makes the Act "a monstrous monument of shams."

No grant of  
Economic  
Swaraj

The political *Swaraj* will be an empty husk without the economic *Swaraj*. India, therefore, wants economic *Swaraj pari passu* with the political *Swaraj*. The Government of India Act, 1935, however, does not grant that. Under the new Constitution, the financial powers that are promised to the Federal Ministers are very inadequate. Although the Department of Finance will be transferred to their control, yet it is

Transfer of  
Finance  
hedged in  
by safeguards

"so elaborately fenced round by safeguards and other ingenious devices that it will be difficult for a Minister to move freely and safely though this labyrinth and formulate a policy that will offer opportunities for the free and unhampered exercise of our national ability and energy. Ministers can be checked and controlled at almost every turn and their cherished plans might be thwarted by the *idée fixe* of a stubborn counsellor or a financial adviser steeped in theory and vanity."\*

The  
Financial  
Adviser

12

The appointment of a Financial Adviser to the Governor-General by the latter at his discretion is a clear encroachment on the rights of the future Federal Minister for Finance. The expenditure on Defence, External Affairs, Ecclesiastical Affairs, and certain Special Responsibilities and other items is charged on the revenues of the Federation. This expenditure is beyond the control of the Ministers and the vote of the Legislature. It cannot be changed to suit the needs of the policy of the Ministers. The Reserve Bank of India, which would control banking and the currency policy of the country, is beyond the control of the Federal Ministers. The Federal Railway Authority, which will control the huge national enterprise of the railways with its huge outlay, will also be independent of ministerial control. The salaries and pensions of the superior Civil Servants cannot be touched by the Federal Government. All this has the effect of placing a very large amount of expenditure beyond the control of the Federal Ministers. It is estimated that over 80 per cent. of the total expenditure of the Federation will be non-votable and less than 20 per cent. will be votable. Thus the control of the Ministers and the Legislature will be over about 20 per cent. of the total expenditure. Can they

m. J. h. .  
The Charged  
Expenditure

\*Dr. Sir Shafaat Ahmad Khan; The Indian Federation, page 358.



initiate any new or bold policy under the circumstances? Can they solve the bread problem of India? Can they help in the industrialization of the country? The answer is a clear no. While the responsibility will be theirs, the means to discharge that responsibility will be lacking. With the Provinces clamouring for more financial help from the Centre, their position will become all the more difficult. The only other alternative is additional taxation, for which the country is not prepared.

Awkward  
Position of  
the Ministers

Provisions relating to commercial discrimination against British trading interests and nationals in the legislative and executive spheres constitute a great obstacle in the way of India's economic progress. In the first instance, it is the birthright of every country to discriminate in favour of its nationals, but even if this is not conceded in the case of India, there is absolutely no justification for strangulating her economic life under the cloak of preventing discrimination against British interests. British nationals are guaranteed free entry and domicile in India as long as the Indians are guaranteed free entry and domicile in Britain. The British nationals and British trading companies are not subject to discrimination in respect of taxation. British companies carrying on business in India are eligible for subsidies payable to Indian companies. Ships and air craft registered in the United Kingdom are also not subject to discriminatory treatment. The principle of reciprocity, which is provided for in the Act, is devoid of any real value because the initiative for introducing discriminatory legislation is left to the British Government in the United Kingdom and is denied to the Indian Government. Moreover the advantage of reciprocity is entirely on the British side as the number of Indian concerns operating in Great Britain is insignificant as compared to the large number of British trading interests operating in this country. These provisions are manifestly unjust to India. They will make it almost impossible for the Federal Government to initiate any economic policy or bold reform, or to promote or even protect Indian national enterprise against competition from British concerns. Thus India must always remain at the mercy of the foreigners for her economic needs. British imperialism must justify its existence in India by continuing

Prevention  
of Commer-  
cial Discrimi-  
nation

The Princi-  
ple of  
Reciprocity

Economic  
slavery of  
India

her economic exploitation. Thus both from the political and economic points of view, the new Constitution of India does not place any real power in the hands of the representatives of the Indian people. It is, therefore, no answer to the demand of the Indian for *Swaraj*.

**No Provision for Future Growth.**--A Constitution for India must contain the seeds for future growth. Either it should be elastic enough or it should contain a provision for automatic expansion or for planned and premeditated expansion towards a well-defined goal after a fixed period. The constitutional scheme of the Government of India Act, 1935, does nothing of the sort. Its provisions are very rigid and inelastic so as to preclude any automatic advance without the sanction of the British Parliament. A real advance will involve amendment of the Act. The Indian Legislature cannot amend the Act except in certain minor matters, and that also through an elaborate and difficult process. It is only the British Parliament that can amend the Act, but even it may do so only in certain cases without affecting the accession of the State. The language of the Act, generally speaking, is mandatory and not optional. There is no provision in the Act providing for automatic expansion, while it is being worked, or after a fixed period. Moreover, if a strict legal interpretation is applied to the provisions of the Act, little scope will be left for the growth of constitutional conventions and understandings. In the old Constitution, there was a provision making it obligatory for the British Government to appoint after the lapse of ten years a Royal Commission to examine the working of the reforms and to report if further advance was necessary. Whatever might have been the defects of the old scheme, it must be admitted that this provision for the appointment of the Royal Commission after a fixed period shows that the framers of that scheme sincerely worked for constitutional advance of India towards her destined goal. There is no provision of this sort in the new Act. It is clear that the framers of the Act were not prepared to bind the British Parliament to the consideration after a fixed period by a Royal Commission or otherwise of the working of the Act with a view to its revision or removal of some of its objectionable features. Everything is left to the circumstances that may prevail in future. Again the

Rigid and  
Inelastic

Little scope  
for Constitu-  
tional  
Conventions

constitutional  
autocracy

No examina-  
tion after a  
fixed period

framers of the old Act built 'with strength of design and strength of purpose' and kept in view the fixed goal of Responsible Government for British India, as had been declared in the Declaration of August 20th, 1917. Since then, much water has passed down the Thames and the Ganges. The Declaration of 1917 was authoritatively interpreted in 1929 to mean Dominion Status for India. A number of responsible British statesmen have accepted and even confirmed this interpretation. Yet the Act does not contain any mention of Dominion Status. It does not confer Dominion Status on India, nor does it declare it or accept it as the ultimate goal for India. On the other hand, Sir Samuel Hoare, the then Secretary of State for India, made it clear during the Debates in the Commons that the Dominion Status would not be the next step, nor even the next but one. Thus it is clear that the new Act does not bring India nearer her declared goal of Dominion Status.

No mention  
of Dominion  
Status

As a matter of fact, it is suspected that the framers of the new Act wanted to hide the goal of Dominion Status in the mist of uncertainty, and worked for making it a very distant ideal. They could not go back on the promises already given to India, but they could and did interpret them in a different way. It was declared :

Different  
interpreta-  
tion of the  
British  
Pledge

"As we understand the pledge, it is merely that we shall do nothing inconsistent with that, and shall at such times and in such measures as we consider right, advance towards that goal, and meanwhile remove wherever we are able, the obstacles that stood in the way of future advance."

Thus there is no obligation on the British Parliament and the British nation for a positive effort on their part to help India to attain Dominion Status. Mere indifference or neutrality on their part is not sufficient and cannot satisfy India. The framers of the Act ignored this and refused to formulate a new Preamble to the Act accepting the interpretation of 1929. In order to keep up appearances and to show that they were not going back on the British pledges, they agreed to keep in force with the new Act the Preamble to the Act of 1919, which defined the attainment of Responsible Government as the political goal of India in terms of the Declaration of 1917. This was perhaps an attempt to move back the hands of the political clock by a decade and a half, and could not be a quiesced

No new Pre-  
amble to  
the Act

The Preamble has no bearing to the realities of the situation

in. Moreover the framers of the Act did not care to note that that the Declaration of 1917 and hence the Preamble to the Act of 1919 had reference to British India alone and not to British India and Indian States taken together. It had nothing to do with the proposed scheme of Federation between two Indias, the red and the yellow.

The attainment of Dominion Status made difficult by the entry of the States in the Federation

If anything, the scheme of the Act makes Dominion Status difficult of attainment by India. The coming in of the States complicates the issue. The States' claim that the paramount power in respect to them was the British Crown and not the Government of India was recognized. Paramountcy is irrevocably and in perpetuity the prerogative of the Crown, and is to be exercised through the Crown Representative or the Viceroy. It is to be kept strictly outside the control of the Federation. This makes

1. Dominionhood of India defective. Again it has been demanded on behalf of the Indian States that no further transfer of subjects, which would involve any change in their relations with the Crown, should be permitted to be made to the control of the Federal
2. Ministers without the consent of each State joining the Federation This has particular reference to the
3. transfer of the subject of Defence involving the control of the Indian army. This question, it is said, is mixed up with the question of paramountcy, as the defence of India involves the obligation on the part of the Crown to protect the Indian States from external aggression and internal commotion. Thus the consent of each individual State joining the Federation is essential before the Department of Defence can be transferred to the control of the Responsible Ministers. Can Dominion Status be possible without the transfer of the complete control on Defence? The answer must be "No." Without the control on Defence policy and the army, Dominion Status will either be a farce or a tragedy, or both. Moreover the grant to the Federation of India of full Dominion Status, with all the powers explicit and implicit in that phrase, is likely to bring some direct constitutional change in the relation of the

The transfer of Defence to ministerial control

consent of every state required under Paramountcy, since to protect its )

Direct change in relationship with the States

4. States with the Federation of India. This the States are not prepared to countenance at present. Thus some of them may oppose the grant of full Dominion Status to Federal India. As long as this is done even by a single Federated State, the obstacle is real and legally insurmountable. Hence it may be

concluded that the new Act does not bring the realization of the goal of Dominion Status nearer. Indeed, some people doubt if it really puts India on the right road to Dominion Status.

To sum up, it may be stated that the Federal scheme as adumbrated in the new Constitution of India is "highly artificial and unnatural."\* It is full of defects and anomalies. It is undemocratic and ultraconservative. It does not transfer any power to the representatives of the people. It retards the progress of British India by conceding predominant voice to the Indian States. It does not contain seeds of internal growth. It marks no real advance towards Dominion Status. According to Mr. Churchill the Government of India Bill—now the Government of India Act 1935—"is a gigantic quilt of jumbled crotchet work, there is no theme, no pattern, no agreement, no conviction, no simplicity, no courage in it."

**The Unwanted Constitution.**—Such a Constitution, in the words of Mr. Satyamurthi, cannot be accepted by India "as a suitable dwelling place for her new consciousness of nationhood." Its defects are so numerous and glaring that it cannot be supported by any political party in the country. Of all the all-India political parties, it is only the Hindu Mahasabha, which has advised the people of this country to work the Federal scheme. It has done so because the scheme preserves the political unity of India; but perhaps the more important reason for its support is that it is afraid that if the whole question is reopened it may lead to another Communal Award for the Federal Centre in order to satisfy the new Muslim demand for increased representation in the Federal Legislature. This can take place only at the cost of the Hindus, who have suffered greatly by the first Communal Award of late Mr. Ramsay Macdonald. Perhaps the Mahasabha hopes that although the Hindu majority has been reduced to a minority in the Federal Legislature, yet with the help of the representatives of the States, majority of whom are Hindu, the Hindus may still form majority in the House. Thus it is only as a lesser evil that it supports the Federal scheme of the Government of India Act.

Summary

Supported by  
the Hindu  
Mahasabha

A lesser evil

\* Mr. M. A. Jinnah.

Opposed by  
all other  
political  
parties

Opposition  
of the Indian  
National  
Congress

No substitute  
for *Swaraj*

No progress-  
ive  
Ministry will  
be able  
to function

Opposition  
of the  
Muslim  
League

With this exception, all other important political organizations in the country have unanimously declared themselves against the scheme of the Act. The National Liberal Federation of India has condemned it on account of its reactionary and undemocratic nature. The Indian National Congress has rejected it because it is not a "Swadeshi" Constitution, having been forged in London by the combined efforts of the British imperialists and those who were not the elected representatives of the people of India. It is reactionary, ultra-conservative, undemocratic, and anti-national. It does not transfer any real power to the people of the country. The Central Responsibility is only an illusion. The Governor-General has arbitrary powers which he can use over the head of the Ministry. Moreover, the representatives of the States will be the nominees of the Princes, who are likely to support the forces of reaction rather than progress. In short, in the view of the Congress, this Constitution is no substitute for *Swaraj*. It has been suggested that the Congress is opposed to the scheme because it will not be able to command a majority in the Federal Legislature and therefore will not be able to form a Ministry. Although Sardar Patel, the strong man of the Congress Working Committee, once declared that the Congress would have a comfortable majority in the Federal Legislature, yet it is rather doubtful if it will be able to do so, things remaining as they are. But apart from this party question, it may be stated that it will be difficult for any progressive Ministry to function in the face of the combination of reactionary forces in the House. Thus from this point of view, the Constitution stands self-condemned.

Even the All-India Muslim League is opposed to the Federal scheme. It supported Provincial Autonomy but condemns the scheme of the Federation of India as outlined in the new Act. It was at the initiative of Mr. M. A. Jinnah, the President of the Muslim League, that the present Legislative Assembly passed a resolution condemning the Federal scheme. This opposition has been reiterated at the various sessions of the League and in a number of public utterances. In a statement issued from Bombay on December 20, 1938, Mr. Jinnah stated---

"This peach tree which has failed to produce any fruit and is withering in provinces, His Excellency now wants us to implant it on the sands of the Jumna at Delhi on the sole plea that the unity of India can only be secured throughout the sub-continent by this highly artificial and unnatural scheme.....In my opinion the British Government by forcing the scheme upon India will bring about more disastrous consequences to all concerned than even the ill-fated Versailles Treaty which created the new state of Czechoslovakia Republic by artificial methods which dragged in together wholly antagonistic and foreign elements and sections of people and races under a so-called system of democratic parliamentary government."

Mr. Jinnah's statement

This is a fairly emphatic denunciation of the Federal scheme by the mouth-piece of the Muslim League. The latter is opposed to Federation because

Does not go far enough

"it does not go far enough; it does not confer upon India the Status of a Dominion, far less does it bestow upon India independence which is the professed goal of the Muslim League policy."

But like the Hindu Mahasabha, it views things more from the communal point of view than from the national point of view. Regarded from that angle, it thinks that the scheme proposes to set up at least a partially Responsible Government at the Federal Centre which will be dominated by the Hindu majority. It feels specially chary of this as it distrusts the Hindu majority. It is afraid that it will not be possible for the Governor-General to bring into action the safeguards for the protection of the Minorities against the opposition of the Federal Ministry as has happened in the Provinces. It also fears that the great powers of interference in the administration of the Provinces possessed by the Governor-General may, under pressure from his Federal Ministers, be used to whittle down Provincial Autonomy and to neutralize the advantages enjoyed by the Muslims in their majority Provinces.

Fear of Hindu domination

To guard against these dangers, a number of demands has been put forward by the Muslim politicians. Sir Sikandar has demanded in his new scheme that the Dominion Status must be immediately declared to be the constitutional goal of India. The Federal Ministry must contain a fixed number of Muslim members. The Muslim representation in the Federal Assembly should be further increased so as to be one-third of the total membership of the House and not only of the total membership from British India. Another demand is that because the Muslims will always be in minority in the Federal

More safeguards for the Muslims



Legislature, a provision, stopping the passage of those measures which are opposed by a majority of two-thirds of the Muslim members of the Legislature, should be inserted in the Act. Again a demand is made for the transfer of whole of the Concurrent Legislative List to the control of the Provinces, and also that the residuary powers should be vested in the Provinces. Lastly it is demanded that the Muslim share in the Federal and the Provincial Services should be fixed by statute. It is not proposed to examine here the justness or otherwise of these demands. It must, however, be stated that most of these demands are old demands. They were considered by the framers of the Act and were rejected because they were either unfair or impracticable.

A word, however, may be said about the Muslim fear of Hindu majority. It has already been pointed out that the Hindus have been reduced to the position of a minority in the Federal Legislature. In the Lower House, they have been assigned only about 28% seats. With this 28 per cent they cannot dominate the Centre. Moreover, they cannot form a single solid communal group because they will be divided among themselves, particularly between the Congress Hindus and the non-Congress Hindus. There is little likelihood of a permanent alliance between these two groups. Even if the non-Congress Hindus are able to claim the votes of some of the Hindu representatives from the States, they are not likely to command a majority. Coming to the Congress it may be stated that, as Sir A. H. Ghaznavi pointed out in a statement issued from Simla on June 28, it is not likely to command more than forty per cent seats in the Lower House. This is due to the fact that in that House 33·3 per cent seats will be filled by the Indian States. The Muslims will be allotted about 23 per cent. Out of the remaining 44 per cent, some seats are reserved for Europeans, Anglo-Indians, and other special interests. Thus only about 40 per cent seats are left for the Congress. It cannot capture all these seats; but allowing that it will capture some seats belonging to other communities, the total cannot exceed 40 per cent. Of course the Congress is trying to secure some seats from the quota of the States, but it remains to be seen whether its efforts in this direction will succeed. Thus the fear of the Muslim

Rul  
aid  
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Unfair or  
impractica-  
ble

Hindus can-  
not have a  
majority at  
the Centre

Congress  
cannot have  
absolute  
majority

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League regarding a strong and irremovable Congress Ministry is also not very real, at least as matters stand at present.

The Muslim League, in the last resort, shows preference to a Federation of British Indian Provinces alone over an all-India Federation of British Indian Provinces and the Indian States, because it will assure the speedier progress for British India. Perhaps it also believes that the Muslim interests will be safer in a Federation of the former kind because the Indian States, majority of which are Hindu, will be eliminated, thus reducing Hindu strength. In this belief, it seems to be mistaken. In a purely British Indian Federation, allowing for 33 per cent seats for the Muslims and some for other special interests, Europeans, Anglo-Indians, etc., the Hindus are left about sixty per cent seats, majority of which can be captured by the Congress.

Muslim  
League's pre-  
ference for  
a Federation  
of British  
Indian  
Provinces

**New Trend in Muslim Politics.**—There is now a new trend in Muslim politics. It is clear that some of the Muslim politicians are disappointed in their hopes which they had pinned, perhaps wrongly to the Provincial Autonomy. They had hoped to capture and dominate four or five out of the total of eleven Provinces of India, and thus to offset Hindu influence in the remaining Provinces. But the Indian National Congress, with its national programme and appeal to the masses of all communities, besides capturing all the Hindu majority Provinces, was able to capture the North-West Frontier Province and Assam. Out of the remaining three Muslim Provinces, Sind has got a pro-Congress independent coalition Ministry under a Muslim Premier, who does not owe allegiance to the Muslim League or any other similar Muslim organization. The Punjab cannot be said to have a purely Muslim League Ministry, though most of the members of the dominant group in the ministerial party are also members of the Muslim League. The same may also be said about Bengal. Moreover even some of these Ministries are quaking before Congress onslaughts—the Bengal Ministry is carrying on only with the help of the European group. Thus those who desired to have purely Muslim Ministries are thoroughly disappointed. These people are joined readily enough by discontented Muslim politicians in the Congress majority Provinces, who are placed in a permanent minority on account of the

The disap-  
pointment of  
the Muslims

Discontented  
Muslim  
politicians in  
Congress  
majority  
Provinces

fixed reserved seats for communities. Moreover it is clear that the Congress Governments in the Provinces are not working as some of the Muslim politicians would like them to work, on account of fundamental differences in outlook which are being accentuated by the policy of non-cooperation and aloofness from the Congress adopted by some of the Muslims. This has further added to the Muslim discontent.

Causes of  
the disap-  
pointment

It is rather unfortunate that no attempt is being made either by the Muslims themselves or by others to understand the root cause of this disappointment and discontent. Apparently this is ascribed to the failure of the safeguards for the Minorities provided in the Constitution. The Governors are blamed for not showing enough courage by using their Special Powers in the way in which the communal minorities in opposition want them to do. It is rather amusing to find that this complaint is not peculiar to the Congress majority Provinces but is also made by the Hindu minorities in the Muslim majority Provinces. The question, therefore, does not concern merely the Muslims but also the Hindus, though it is more important for the former because being a minority from the all-India point of view, they are in minority in more Provinces than the Hindus. Clearly the question is of first rate national importance and deserves careful examination.

Discontent  
of the  
Minorities

Could the  
Minority  
safeguards  
be success-  
ful ?

Is this discontent only due to the failure of the safeguards ? It cannot be denied that the safeguards have failed, but could they be successful, or should they be successful ? It should be realized that these safeguards cannot function successfully. No Governor can afford to create a crisis after a crisis by bringing his Special Powers into play against the decisions of his Ministry, whether Hindu or Muslim, commanding a majority in the Legislature. If he were to do it, the whole constitutional machinery will come to a standstill. Moreover by doing it, the Governor will become unpopular with the party or community supporting the Ministry, which in certain Provinces will be Muslim while in others will be Hindu. Thus in different Provinces, different communities will decry the safeguards. This shows that these safeguards cannot be an adequate and uniform remedy for the trouble. Under the circumstances, safeguards were bound to fail as they have done.

But should the minorities—Muslim and Hindu, seek the protection of these safeguards and the

Special Powers of the Governors? It is admitted by all that these Special Powers are an encroachment on the authority and powers of the Responsible Ministers and stand in the way of the complete transfer of power to the representatives of the people. If it is so, why should they be supported, even if they assure some immediate gain. A community which is in minority in one Province will welcome the exercise of these Special Powers, in that Province, but the members of the same community in another Province where it is in majority will condemn it.

Should they  
be successful?

This is true both in the case of the Hindus as well as the Muslims. The attitude of both is inconsistent, contradictory, and harmful to them from the all India point of view. Moreover, is it not galling to the self-respect of the communities concerned to go to an agent of the third party for protection from the tyranny of each other?

If this is realized, the failure of Minority safeguards will no longer be regarded as the real cause of the discontent of the Minorities. The real cause will be found to be mutual distrust between the communities and the desire to dominate the other. An earnest attempt should be made to remove this distrust and to establish mutual confidence and trust. Instead of cherishing a desire for dominating the other, the communities must learn to respect each other's rights. This can only be done if the communities are made to feel that they are equally important limbs of the Indian nation, and must not look upon themselves as Hindus and Muslims in the political field. Only the rise of inter-communal political parties, with political and economic programmes, and cutting across the barriers of castes, creeds, and communities, can solve the problem permanently. No amount of safeguards will ever do it.

The real  
cause of  
discontent

A permanent  
solution

**Making Federation Safe for the Muslims.**—This, however, is not realized by some prominent leaders of Muslim opinion in the country. Instead of realizing the futility of these safeguards, they demand further safeguards to make Federation safe for the Muslims. By this perhaps they mean the domination of the Federal Centre, making it impossible for the Hindus, whether under the communal leadership of Hindu Mahasabha or under the national leadership of the Congress, to take any step against

Two nation  
90 million Muslims  
who are minorities but  
New  
Schemes

their wishes, even though it may be necessary for national growth. Some of them are thinking of altogether different methods of safeguarding Muslim interests in India by dividing India virtually in Hindu India and Muslim India, kept together in a loose union. They have begun to attack the very basis of the Federal scheme as adumbrated in the Government of India Act, 1935, and have brought forward a number of alternative schemes aiming at a Confederation rather than a Federation of India.

Origin of  
the Scheme

Division of  
India

Pakistan  
(Comp.)

Union with  
Hindustan

Merits of  
the Scheme

**The Muslim Alternative Schemes.**—The first in point of time is the Pakistan scheme. Although it was brought to public view by the poet-politician of India—the late Sir Muhammad Iqbal, as President of the All-India Muslim Conference at Allahbad, yet it is believed to have originated with one Mr. Rahmat Ali. It strikes at the very roots of 'one Indian nationhood' idea, and is based on the notion that the Muslims and the Hindus are two separate nations with different religions, cultures, civilizations, histories, traditions, literatures, economic systems, and social laws. It proposes to divide India into a Muslim India—the Pakistan, and Hindu India—the Hindustan. The Pakistan is to consist of the Punjab, the North-West Frontier Province, also called the Afghan Province, Kashmir, Sind, and Baluchistan—all predominantly Muslim Provinces. The word 'Pakistan' is derived by combining the first letters of the words, Punjab, Afghan Province and Kashmir, second letter of Sind, and the last four letters of Baluchistan. The Muslims in this territory, who are 30 millions or so out of its population of 42 millions, will consider themselves 'Pakistanis' and not 'Hindustanis.' The framers of the scheme argued that the Pakistan would serve as a 'national citadel' for the Muslims of India providing a 'moral anchor' and political shield and bulwark for the 45 millions Muslims living in Hindustan proper. The 'Pakistanis' would be willing to help the latter to secure political justice, whenever necessary. Ordinarily, however, they will be content to live peacefully in this area, perhaps uniting for common purposes with Hindustanis, if necessary, though they would never consent to the usurpation of Pakistan.

The scheme has one merit that it satisfies the Muslim ambition to rule themselves and not to be dominated by the Hindus, who are in majority in

Hindustan. It is also clear that Pakistan is a contiguous geographical area, which can be united in a single compact area for the purposes of political union. Some Muslim separatists go further and claim that it is separated from Hindustan proper by the Jumna and is not a part of India. Here the Muslims are in an overwhelming majority and claim to possess all the essentials of a nation. These things go in favour of the scheme, but much can be said against it. The scheme aims at dividing India into two nationalities, who, if they are once disunited are likely to take to different roads and shall not come together. It strikes at the fundamental unity of India, which has been asserting itself under the conditions provided by the Pax Britannia in this country. The two nations, with the conflicts of the past still fresh in their minds, are likely to be permanently at war with each other which will stand in the way of the progress of both the units. This point should be considered not from the point of view of the present but from the point of view of the future. It is futile to quarrel over the question whether the Hindus and the Muslims form one nation at present, but the question of questions is whether it is desirable to evolve in future one Indian nation, comprising both the elements. This nation is bound to be a strong one and would be able to safeguard its existence in face of all dangers in this world, dominated by ideas of power-politics. Some Muslim separatists perhaps aim at having two nations—the Pakistanis and the Hindustanis. They forget that both of them will be weak and will find it difficult to safeguard their existence against foreign dangers. From the economic point of view, as well, it will be better to be united and friendly than disunited and unfriendly.

It is also suspected that this scheme draws its inspiration from the "Pan-Islamic Movement," which aims at uniting into a Muslim Federation all the Muslim States from the coast of Western Asia to the Punjab. Whether Pan Islamism is practical politics or whether it will succeed in view of the rise of nationalistic feelings in Muslim countries, the racial diversities, conflicts of economic interests and traditional and historic animosities, is not for us to discuss here. But it may be pointed out that the Hindu idea in reply to this is a sort of "Pan Hindu Movement," which aims at uniting Hindu India,

Criticism of the scheme

Strikes at the unity of India

Is it desirable to have two nations in India?

Inspired by the Pan-Islamic Movement

Hindu reply

A political  
danger to  
world peace

Burma, China, Japan, and possibly including Indo-China and Siam. Both the ideas are impractical and visionary, but they do a lot of harm to the idea of united Indian nationhood. If realized, they would bring two great religions of the world—Islam and Hinduism-cum-Buddhism, in a perpetual religious-cum-political conflict, and thus prove a potential danger to world peace.

Hindu point  
of view

The Muslim  
point of view

Ignores the  
Muslims  
living  
in other  
parts of  
India

(Problem still there)

Raja Sahib  
of Mahmud-  
abad's  
opinion

Mr. Z. H.  
Lari's  
criticism

From the Hindu point of view, the scheme is not acceptable as it leaves about twelve millions of Hindus at the mercy of the Pakistanis, converts the territory of the Hindu Maharaja of Kashmir into a Muslim territory, and leaves the gateways of India in the hands of those who may make common cause with the foreign invaders. Again the Sikhs, though a small minority in Pakistan, can never agree to be governed by the Muslims with their theocratic ideals of government and the Religion-Nation idea of the *Millet*. Even from the Muslim point of view, the scheme has been found to be defective. The scheme consults the interests of only thirty millions Muslims living in Pakistan and leaves the majority of Muslims, numbering forty-five millions scattered in different parts of Hindustan, at the mercy of the Hindustanis. Thus the scheme provides for only a minority of the total Muslim population and ignores the interests of the majority. It strikes at the solidarity of the Muslim race in India and, therefore, is not in the general interests of the Muslims. This has been realized by the Hindustani Muslims, who attack it on this ground. The Raja Sahib of Mahmudabad declared in his presidential address at the first Delhi Provincial Muslim League Political Conference that the Pakistan scheme leaves out of account the fate of the Mussalmans scattered in the Provinces, where the Hindus happened to be in majority, and that it does not take note of Bengal, Hyderabad, Bhopal, and other Muslim States. Mr. Zahirul Hasan Lari, M.L.A., United Provinces, declared in his presidential address at the Pilibhit Muslim Political Conference that such a scheme while harmful to the Muslim interests in the Hindu majority Provinces, was fatal to the national strength of the country, making it the battle ground of two hostile communities. It betrayed a purely negative attitude and was no remedy for their ills. He is reported to have observed :

"The Pakistan Scheme ignored the Muslims living in other parts of the country except those in the Punjab, N. W. F. P., Baluchistan and Sindh. On the other hand the main problem was that of the Muslims living in provinces where they formed a minority."

Even Dr. Sir Shafaat Ahmad Khan declared the scheme to be impracticable. This aspect of the criticism will be further appreciated when the strength of the wedge introduced into the ideas of Pan-Islamism and Pakistanism by the Frontier Gandhi, Khan Abdul Gaffar Khan, and his Red Shirts, with their ideas of Congress nationalism, is realized.

**The Confederation of India: Dr. Abdul Latif's Scheme.**—Realizing the imperfections of the Pakistan scheme, more schemes have been devised with the dual purpose of consolidating Muslim interests throughout the country and of avoiding the domination by the majority community. For this purpose these schemes aim at dividing India into cultural-cum-communal zones and regions and then unite them into a Confederation of India with a weak Centre and where the position of the Muslims is adequately protected by means of safeguards. One of such schemes has been put forward by Dr. Syed Abdul Latif of Hyderabad, Deccan, at the instance of the All-India Muslim League. The scheme ultimately aims at evolving in the country an independent Confederacy of culturally homogeneous free States. The reasons for formulating this alternative scheme as stated by the author are that India is not a composite nation and does not promise to be one as long as Hindus and Muslims continue to be divided into separate and different social-cum-cultural-cum-religious groups, that the majority government, which is sought to be established, will also be manned by the communal majority of the Hindus, on whose mercy the Muslims will always be, and that the Muslims will always be a helpless minority at the Centre and in most of the Provinces and the Indian States. This will have the effect of denying to the Muslims any opportunity for economic advance and cultural progress on Islamic lines, diminishing their historic importance in the country, ruling out the possibility of their acquiring equal status and position in the consels of the country, and of perpetuating the cultural-cum-communal clashes between the communities, which admittedly stand in the way of the attainment of

Sir Shafaat  
Ahmad  
Khan's  
opinion

Cultural  
cum-com-  
munal Zones

Dr. Syed  
Abdul  
Latif's  
Scheme

Confederacy  
of culturally  
homogeneous  
Free States

Reasons for  
formulating  
the Scheme



independence by the country. Thus with the avowed object of removing obstacles in the way of India's independence, this new scheme of government is devised.

Division  
into Zones

**The Zones.**—In order to realize the ultimate aim of the establishment of a "Confederacy of culturally homogeneous States," it is thought essential to divide the country into Zones, comprising such cultural units or nationalities that can resolve themselves into culturally homogeneous States. It is suggested to have the following Muslim Zones:—

The Muslim  
Zones

Punjab,  
Kashmir,  
North-West  
Frontier  
Province,  
Baluchistan,  
Sind, Khair-  
pur, and  
Bahawalpur,  
Bengal and  
Assam

(a) *The North-West Block*, consisting of the Punjab, Kashmir, North-West Frontier Province, Baluchistan, Sind, Khairpur, and Bahawalpur, will be a new cultural and political homeland for the thirty million Muslims residing in this area. It is suggested that the Hindus and Sikhs living in this Zone should concentrate into the Hindu and Sikh States in this area. The Sikhs, however, are allowed to have their religious centre, Amritsar, as a free city. The Hindu Maharaja of Kashmir is to be compensated for the loss of his territory by handing over the British-owned Kangra Valley to him.

(b) *The North-East Block*, comprising Bengal and Assam, will be a free State of thirty million Muslims living in that part of the country.

Delhi, U. P.,  
Rampur, etc.

(c) *The Delhi-Lucknow Block*, comprising Delhi, the western part of the present United Provinces, and the Rampur State, will provide a home for twelve million Muslims of the United Provinces and Behar. This Block will be contiguous to the North-West Muslim Block, but will leave out, presumably under Hindu control, the Hindu religious centres of Muthra, Benares, Hardwar, and Allahabad.

Hyderabad  
and Berar,  
and Madras

(d) *The Deccan Block*, comprising the Dominions of Hyderabad and Berar, and a narrow strip of territory running down *via* Kurnool and Cuddapah to the city of Madras, will serve as a compact area for the Muslims living scattered below the Vindhyas and the Satpuras. This territory is required for having access to the sea for the Muslim mercantile community living on the Coromandal and Malabar coasts. It is also pointed out that some Muslims prefer to have an opening to the Western Coast *via* Bijapur.



(e) *The Muslim States and Ajmer.*—The Muslims, living outside the above-mentioned Zones in Rajputana, Gujrat, Malwa, Western India States, may concentrate in the Muslim Indian States in those areas and Ajmer, which will be a free city.

**The Hindu Zones.**—The remaining part of India will be at the disposal of the Hindus, who can partition it into Zones on linguistic basis, or otherwise. The Hindu and Muslim population, living in the Zones allotted to the other community should migrate to the Zones allotted to their own community.

**Other Minorities.**—It is proposed that the present day Minorities, constituting the smaller nationalities of the future, comprising the Christians, Anglo-Indians, Parsis, and Buddhists may continue to live where they are at present. If, however, they so desire they should be allowed a *cantonal* life in the Zones allotted to the major communities. In the alternative they will be afforded religious or cultural safeguards which they may need to preserve their individuality. The Depressed Classes or the *Harijans*, who are scattered all over the country and do not possess any separate common culture, are to be given the liberty to choose as their permanent homeland either the Hindu or the Muslim Zones as they please.

**Transitional Period.**—It is realized that this scheme cannot come into force immediately. It is proposed that the 1941 census should provide the preliminary data which should be considered by a Royal Commission with the idea of giving final shape to the scheme. Thus there would be a transitional period during which an *ad interim* Constitution shall have to be devised. This Constitution, "while assuring political unity for the whole country, will allow no single nationality to obtain the upper hand over the other, and yet afford them all every moral urge to work together for the evolution of the needed homogeneous free states." It may even take the form of a Federation, if the powers of the Centre are reduced to a bare minimum. This Federation should consist of units, which can later resolve themselves into cultural Zones, though this may necessitate the creation of some new Provinces on cultural or linguistic lines. One of such Provinces must be carved out of the present United Provinces with Lucknow as its centre, and should always have a Muslim Prime Minister so as to make it eventually a Muslim Zone. During this period the

On linguistic basis

Cantonal life for other Minorities

The Depressed Class e

Consideration by the Royal Commission

Constitution for the transitional period

May be a Federation

A new Muslim Province

Regional  
Boards

*Regional or Zonal Boards* may be created to deal with subjects of cultural and economic importance common to contiguous units in the Federation. These Boards must have adequate Muslim representation.

Nature of  
the Execu-  
tive

The Prime  
Minister

**Safeguards for the Muslims.**—A number of safeguards is considered necessary for the Muslims during the period. The system of separate electorates for Muslims with the existing proportions allotted to them in the different Legislatures must continue. All subjects touching Muslim religion, personal law, and culture must be exclusively dealt with by the Muslim members of the Legislature, who would be helped by Muslim theologians from outside. The executive Government, made up of the Ministers, should not be formed by the majority party alone, which is likely to be the Hindu party, but should be a "composite cabinet," comprising Hindus and Muslims with a common policy. It should not be a "Parliamentary executive" but a "stable executive," independent of the Legislature and not liable to be turned out by it. The Prime Minister should be elected by the members of the Legislature. He should hold the office during the term of the Legislature, irrespective of any subsequent vote of the Legislature. He should form his own Cabinet from all groups but with an equitable number of Muslims enjoying the confidence of the Muslim members of the Legislature, who would suggest a panel for the purpose.

Appoint-  
ment of an  
Assistant  
Minister

The Muslim  
Board of  
Education  
and  
Economic  
uplift

In the case of the portfolios of Law and Education, there should be an Assistant Minister in addition to the Minister in charge. One of them must be Muslim so that Muslim interests may be safeguarded and a steady influence applied on the policy of the Government. A Muslim Board of Education and Economic uplift should be established in every Province to look after the cultural side of the education of the Muslims and their economic uplift. The Muslims may be allowed to tax themselves for any special purpose, if they so chose. On the judicial side, the personal law of the Muslims should be administered by the Muslim Judges.

**Merits of the Scheme.**—This is the scheme that was placed before the All-India Muslim League. It is calculated to satisfy the Muslims as safeguards of their own choice are provided in it. Unlike the Pakistan scheme, it does not ignore the interests of

the Muslims in other parts of the country, but allot three Zones to them with access to the sea in the south-west. From this point of view, therefore, it is a vast improvement on the Pakistan scheme. The safeguards suggested protect adequately the cultural, economic, and political interests of the Muslims. The Legislature, the Executive, and the Public Service Commissions are to be constituted according to their wishes. The Executive is not to be a "Responsible Parliamentary Executive" but a "composite one," containing the representatives of Muslims and virtually chosen by them. Above all, it provides for the administration of Muslim personal law by the Muslim Judges. Thus the Muslims are allowed extra-territorial rights and form a state within a state.

**Criticism.**—The scheme aims at establishing a confederacy of free and autonomous communities in India rather than a united Federation of India. It shall have the effect of converting India into a congeries of virtually free States. They are aligned on communal lines and, therefore, are likely to follow conflicting policies. The segregation of the communities in separate Zones rules out the possibility of their coming nearer and understanding their respective points of view. The hatred, suspicion, and distrust, which characterized the relations of the communities in the past and which has a chance of subsiding by the needs of good neighbours, would flare forth like a dangerous blaze. These differences are bound to spread from the religious to the economic and political fields, which would further strengthen the forces of separatism. Thus this scheme strikes at the very roots of the fundamental unity of India, which it professes to assure. India is bound to be divided into Hindu States and Muslim States, ready to take the field at the slightest provocation.

It is clear that the scheme does not accept the 'one-nation' idea for India, either as a present day reality or as a future goal. In the opinion of the framers of the scheme, India is not and does not promise to be a composite-nation as long as Hindus and Muslims continue to be divided into different social orders and possess different cultures. Some people seriously dispute the point that the Hindus and the Muslims of India possess different

Interests of the Muslims in other parts of the country are protected

Comprehensive safeguards

A composite cabinet

Extra-territorial rights

Division of India into communal Zones

Strengthening the forces of separatism

Wrong assumption

Wrong in  
basis and  
wrong in  
conception

Undoing the  
work of  
centuries

It ignores  
the wishes  
and interests  
of British  
Imperialism,  
Indian States  
and the  
Hindus

cultures. Only a few Muslims in India can claim foreign descent, and even those, who can do so, have now been in this country for centuries. During this period they have got mixed up with the Muslims of Indian descent, who inherit Indian cultural traditions. The contact of their age-long neighbours has also influenced them. Thus a common Indian culture, which is a synthesis of Hindu and Muslim influences, has been coming into being during the last few centuries. The process, perhaps, is not yet complete, but there is no gainsaying the fact that it is going on. If it is not stopped, it is bound to succeed in creating a synthetic, homogeneous culture for the whole of India. Thus so far as the future is concerned, the scheme starts on the wrong assumption. As far as the present is concerned in the words of the *Statesman*, "There exists to-day an essential unity of Indian life from Peshawar to Camorin, and a growing sense of nationality of which the scheme takes far too little account." Whether one may agree with this view or not, the question may be asked if it is desirable to encourage the formation of one nation in India. If the answer is in the affirmative, the scheme must be pronounced as wrong in basis and wrong in conception. If, however, it is desired not to have one united nation in India, the scheme may be defended as it is sure to achieve that end. In that case it will undo the work of centuries of Hindu reformers, Muslim sufis, and of other political and social reformers of both communities. It will also certainly undo the work of British imperialism, which has always claimed that it has given political unity to India. But perhaps it is itself, at least partially, responsible for this trend in Indian politics, and it must suffer when it is going to recoil on itself.

The scheme is wholly and solely designed to protect and even augment Muslim communal interests. It completely ignores the wishes and interests of other parties in India—the British imperialism, Indian States, and the Hindus. It is suspected by some that such schemes are inspired by some British imperialistic politicians. It is very difficult to say how far this is true. But if it is so, the purpose behind the move must be the securing of some tactical advantage against the Congress, dominated, as it is, by the ideas of democratic nationalism and stampeding it

and other Hindus into accepting the scheme of Federation offered by the British Parliament. It is highly improbable that British statesmen would support a scheme which threatens to undo the achievements of British imperialism in India and might prove a danger to its economic and political interests. The Indian States have not yet spoken. It is not known whether they have been consulted. It is very doubtful whether they would care to join the Zones, which are to be created under the Act. Evidently it is believed that the religious sentiments of the Indian Princes and their subjects are sufficiently strong to bring them in alliance with their coreligionists of British India without caring for other considerations, political and economic. No account is taken of the fact that the Indian Princes, both Hindu and Muslim, are very much afraid of democratic ideas, which must prevail within the zones, whether they are Hindu or Muslim.

The third party, the Hindus, who form an overwhelming majority in India, has not been consulted. Their interests have not merely been ignored but sacrificed. It is strange that the majority community should not be allowed to have any say in the drafting of the Constitution of a country, which exclusively claims their patriotism. On its merits, the scheme is clearly unfair to the Hindus. In the first instance, the scheme is devised on the principle that if there is a Hindu Prince ruling a territory with Muslim majority, he should relinquish it to be transferred to Muslim control; if, on the other hand, there is a Muslim Prince ruling a Hindu territory, the Hindus should migrate from the place so as to convert it into a purely Muslim territory. The reference, of course, is to the cases of Kashmir and Hyderabad. If Kashmir is to be converted into a Muslim territory, applying the same principles, it is only just that Hyderabad should be converted into a Hindu territory. The Maharaja of Kashmir and His Exalted Highness, the Nizam, can change places. Again the territory assigned to the Muslim Zones is larger than is warranted by the numerical strength of the Muslims, who are only eighty millions as compared with 250 million Hindus. This territory also contains the most fertile valleys of the Indus and the Ganges, the economically developed Province of Bengal, the prosperous State of Hyderabad, and the strategically important territory on the north-west

Hindu  
interests  
sacrificed

Unfair to the  
Hindus

Kashmir

Territory  
assigned to  
the Muslim  
Zones

Economic  
considera-  
tions ignored

and north-east. Any division of territory must take into consideration economic needs in addition to cultural considerations. If a community is to exist, it must be able to feed itself. This thing is altogether ignored by the framer of the scheme.

The North-  
Western  
Zone

The rights  
of the Sikhs

The North-  
Eastern  
Block

The inclusion  
of Assam

Delhi-  
Lucknow  
Muslim  
Block

Greater  
number of  
Hindus are  
asked to  
move out

No justifica-  
tion for the  
Deccan  
Muslim  
Block

Central  
Indian  
Muslim  
States

Coming to the Zones, it is clear that the framer has acted on the principle "heads I win, tails you lose." He does not care if his distribution is just or equitable provided it serves his purpose of consolidating and strengthening Muslim position in different parts of the country. The North-Western Zone in much more extensive than it should be. The Ambala Division is almost exclusively Hindu, and should not be included in this Muslim Zone. The Jullundhur and Lahore Divisions as well, are not overwhelmingly Muslim. The small nationality of the Sikhs lives to a large extent in this area. Why should not the Sikhs be assigned a separate homeland here? The Muslim population, of course, can move to Western Punjab or in the Multan Division, which area is overwhelmingly Muslim. The North-Eastern Block, consisting of Assam and Eastern Bengal, is to extend right up to the great city of Calcutta. The Hindu population of Eastern Bengal is to move to Western Bengal and Muslim population of Western Bengal is to move to Eastern Bengal. It is known that Eastern Bengal contains a large Muslim population, but in Assam only one district, viz., Sylhet, contains a large Muslim population. Then why the other part of Assam with its overwhelmingly non-Muslim population is proposed to be included in this Muslim Block is not clear. The Delhi-Lucknow Block is proposed to be created for 12 millions of Muslims of Bihar and the United Provinces, while 18 millions of Hindus are to be asked to clear out from this area. Why should not the smaller number of Muslims be asked to move out of this centre of Hindu culture and accommodate themselves in the neighbouring Muslim Blocks cannot be easily understood. Further there is absolutely no justification for the Deccan Muslim Block in view of the fact that the population is overwhelmingly Hindu. Even from the Muslim point of view the formation of this Block is not safe as in the midst of its Hindu surroundings it will be cut off from other Muslim Blocks in the north. Lastly, the Hindu population of the Central Indian Muslim States like Bhopal, Tonk, Junagarh, etc.,



is called upon to move out so as to make them pure Muslim territories. Thus the Muslim States must be protected and safeguarded even at the cost of the Hindu economic and financial interests. Thus it is clear that the formation of these Zones is only a one-sided arrangement, being manifestly unfair to the majority community. Any scheme, which hopes to be accepted by all concerned, must be a compromise involving sacrifices on the part of all the parties. Why should sacrifices be made by one party alone, specially when there is no corresponding gain?

Although there is no denying that the division of India into existing Provinces is defective, as it is not based on any principle, being largely the result of historical circumstances, yet if once the division of India is begun into cultural-cum-linguistic-cum-communal Zones, there will be no end to it. India shall have to be divided into an inconveniently large number of units—big and small. The wisdom of this step is certainly doubtful, specially in view of the danger that some of them, at least, may not be able to exist separately from the financial point of view. If the principles, which form the basis of this scheme, are allowed unrestricted application, the smaller nationalities may not be satisfied by merely cantonal life as in that case, at least from the military point of view, they will be at the mercy of the bigger nationality under whose auspices they may be living. They may also ask for separate homelands. The claims, in this respect of the Sikhs of the Central Punjab, who can easily form a separate homeland in conjunction with the Cis-Sutlej States, cannot be easily brushed aside. The Parsis may also ask for a separate homeland in and round Bombay. The Indian Christians may put forward their claim for having a small Province somewhere near Madras or even in northern India. Will this be conducive to India's interests? Or will it be practicable? Will such small divisions be able to maintain decent standards of administration and finance beneficent schemes in their respective areas?

Again the *Harijans*, who are coming more and more under the influence of separatist tendencies, may ask for a big slice of land, where they will not suffer from any disability, whatsoever, as the presence of a caste-Hindu will not be tolerated there. But the scheme allows the *Harijans* to continue to remain

Division of  
India into  
cultural-  
cum-  
linguistic-  
cum-  
communal  
Zones

Homelands  
for other  
Minorities

The Sikhs

The Parsis

The Indian  
Christians

Is this  
conducive to  
India's  
interests?

The  
*Harijans*

where they are, because in Hindu Zones their presence might weaken the solidarity of the Hindus while in the Muslim Zones they will provide a fruitful ground for conversion. The scheme is based on the migration of population from one Zone to the other, which is very difficult, though not wholly impracticable.

Safeguards for the Muslims	The sheet-anchor of the scheme is the number of safeguards for Muslims. It is expected that the Indians will never forget their communal majority parties to run the administration. The Hindus will always form the majority and the Muslims the minority. Therefore party government and majority rule will always mean Hindu domination which will be detrimental to Muslim interests. So " <u>Responsible Government</u> " of the accepted type <u>must not be allowed to grow</u> . <u>Instead there should be an irremovable and irresponsible Executive</u> . It is very doubtful if the democratic instincts of the politically conscious Indians—both Hindus and Muslims, would accept this. Again the Federal Cabinet must always contain a <u>definite number of Muslims, selected in the prescribed way by the Muslim members</u> . This virtually places the formation of the Cabinet in the hands of the Muslim members. Under the circumstances it will be very difficult for any non-Muslim to form the Cabinet. The Muslim members can simply refuse to select their representatives and thus bring the machinery to a halt. The provision in respect of legislation on the subjects touching Muslim culture to be the exclusive concern of the Muslim members who can seek the help of Muslim divines, and the provision in respect of the administration of Muslim personal law by Muslim Judges alone are simply unworkable in any State where there is a large number of non-Muslims. The question may be asked if such safeguards will also be allowed to other communities. There is no valid reason for refusing such privileges to them, if they are to be allowed to the Muslims. If this is right, how can the administrative machine function? It is clear that the whole scheme is impracticable, visionary, and fantastic. It does not provide for any political advance, whatsoever. Even Dr. Sir Shafaat Ahmad Khan, a prominent Round Tabler and Muslim Leaguer, has openly opined that "it is confused, illogical and romantic, and is moonshine." He expressed the hope that the Muslim League would not be caught in the meshes of wild cat schemes, and
Irremovable and irresponsible Executive	
Muslim control over the formation of the Cabinet	
Legislation on cultural subjects	
Administration of personal law	
Will such safeguards be allowed to other communities?	
The Scheme is wholly impracticable	
Sir Shafaat Ahmad Khan's opinion	



would unhesitatingly reject such half-baked and crude projects.\*

**Mr. Asadullah's Amended Schemes.**—Mr. Asadullah of Calcutta suggested an amendment of Dr. Latif's scheme in one respect. He proposed that instead of the Deccan Block of Dr. Latif's scheme, the Province of Bihar and Orissa should be incorporated into a Muslim block. The Deccan Block is likely to be the weakest of the Muslim blocks, being isolated from the rest of the Muslim Zones. It will be a bit difficult for the Muslims of the other Zones to keep in contact with the Muslims of the Deccan Block or to extend their protecting arm to them, if things come to that pass. Mr. Asadullah's proposal avoids this danger and possesses the additional advantage of forming a range of Muslim Blocks from the north-west to the north-east of India. It eliminates the barrier of a Hindu Block in the United Provinces and Bihar, and thus establishes geographical contiguity of the Muslim Blocks. From the Muslim point of view, this scheme certainly possesses an advantage from the point of view of defence. It will give the whole of Northern India—the best part of the country—to the control of the Muslims, leaving Central and Southern India to the Hindus. As far as Hyderabad is concerned, Mr. Asadullah proposes an exchange of territory between the Nizam and the Maharaja of Kashmir. As for the Muslim population scattered in the Deccan, including that of Hyderabad, he suggests that it should move to the newly created Muslim Block of the United Provinces and Bihar because if the people are to move, "it is all the same whether they are made to move 100 or 500 miles."

This scheme is open to all the criticism to which Dr. Latif's scheme has been subjected. It is all the more unjust to the Hindus because it proposes to convert the Hindu Provinces of Bihar and Orissa into a Muslim Zone simply to give geographical contiguity to the Muslim territory. From the national point of view, the scheme is more dangerous than Dr. Latif's scheme because by eliminating a Hindu Zone from the range of Muslim Zones and a Muslim Zone from the range of Hindu Zones, it allows both the communities to consolidate their forces in separate areas, ruling out the possibility of mutual contact and co-operation.

The New  
Muslim  
Block of  
Bihar and  
Orissa

Geographi-  
cal contiguity  
of the  
Muslim  
Blocks

Exchange of  
Kashmir and  
Hyderabad

Criticism

Unjust to the  
Hindus

More danger-  
ous from the  
national  
point of view

\* Statement issued from Simla, July 10th, 1939.

**Sir Sikandar Hayat Khan's Scheme for the Federation of India.**—Sir Sikandar Hayat Khan, the Hon'ble Premier of the Punjab, has put forward his own scheme for the Federation of India as an alternative for the scheme of the Government of India Act, 1935. He thinks that this will provide a panacea for all economic, political and communal ills of the country. He takes

Panacea for all economic, political, and communal ills

Federal type of Government is desirable

"cognizance of the fact that the federal proposals embodied in the Government of India Act are unacceptable to a vast majority of the people in this country. At the same time, it is admitted by all concerned, and even those who are opposed to the present scheme, that a Federation of some kind is not only desirable but indispensable for the ordered and peaceful progress of the country as a whole."

Principle of the Scheme

Thus he sets about to formulate a scheme of Federation rather than a Confederation or a unitary type of government. The principles on which he endeavours to base the scheme are that the authority of the Centre should be rigidly and specifically circumscribed to matters of all-India concern so as to protect adequately the internal administration of the Indian States and the Provinces from interference from the Centre, and that the religious, political, cultural, and economic interests of the Minorities should be adequately safeguarded. Sir Sikandar suggests that the only practicable course open to India is to accept Dominion Status. Great Britain should make a declaration to this effect immediately, because "granting of constitutional reforms in dribbles can no longer satisfy the aspirations of present-day India."

Acceptance of Dominion Status

What the scheme endeavours to achieve

The scheme provides for the entry in the Federation of the Indian States and the Provinces on a regional basis, encourages collaboration between contiguous units, brought together in Zones, in respect of matters of common concern, reduces causes of friction between British India and Indian States, by cutting down the jurisdiction of the Federal Executive and the Legislature enables the Indian States and the Provinces to enter the Federation on a uniform basis, discourages the growth of fissiparous tendency among the units by ensuring willing and loyal co-operation from the units, safeguards the integrity and autonomy of the units, and lastly gives the Minorities a greater sense of security. All this has been done in order to meet criticism against the official scheme from all quarters,

An attempt to meet criticism of the States and the Muslim Minority

specially by the Indian States and the Minority community.

**Division into Zones.**—Sir Sikandar proposes to divide India tentatively into the following seven Zones with the idea of establiing the Federation of India on regional basis :

Composition

*Zone 1.*—Assam, Bengal, excluding one or two western districts, Bengal States, and Sikkim.

*Zone 2.*—Bihar, Orissa, and the area transferred from Bengal.

*Zone 3.*—United Provinces and U.P. States.

*Zone 4.*—Madras, Travancore, Madras States and Coorg.

*Zone 5.*—Bombay, Hyderabad, Western India States, Bombay States, Mysore, and C.P. States.

*Zone 6.*—Rajputana States excluding Bikaner and Jaisalmer, Gwalior, Central India States, Bihar and Orissa States, and Central Provinces and Berar.

*Zone 7.*—Punjab, Sind, North-Western Frontier Province, Kashmir, Punjab States, Baluchistan, Bikaner, and Jaisalmer.

**The Regional Legislatures.**—Each of these “Zones” is to have a Regional Legislature, consisting of the representatives of units, each one of which will be entitled to send the same number as is allotted to it in the Federal Assembly under the provisions of the Government of India Act, 1935. The British Indian representatives to these Legislatures shall be chosen in accordance with the procedure laid down in the Government of India Act, 1935, for the election of representatives to the Federal Assembly. A long range procedure is laid down in respect of the representatives of the Indian States as under :—

Method of Election

(a) during the first ten years, three-fourths to be nominated by the Ruler and one-fourth to be selected by the Ruler out of the panel to be elected by the State Assembly or a similiar body ;

The Indian States

(b) during the next five years, two-thirds to be nominated by the Ruler and one-third to be elected ;

(c) after fifteen years one half to be elected and one half to be nominated ;

(d) after twenty years, one-third to be nominated and two-thirds to be elected.

If, however, the number of representatives allotted to a State is two or less than two, the Ruler shall nominate them for the first fifteen years. Afterwards they shall be elected in the way described above.

**The Power  
of the  
Regional  
Legislatures**

The Regional Legislatures shall have the power to deal only with subjects which are included in the Regional List. No measure relating to a Regional subject shall be considered to have been passed unless passed by a two-thirds majority. At the request of the units it may legislate with regard to Provincial subjects. Such laws, however, require confirmation by the Government of the units concerned before they can come into force. They shall be repeated, if at least half the number of the units in a Zone ask for it.

**Representa-  
tion for  
interests  
represented  
by the Coun-  
cil of State**

**The Federal Legislature.**—The Federal Legislature shall be unicameral and not bicameral as is provided in the Government of India Act, 1935. But if it is considered necessary to give representation to the special interests, which have been given representation in the Council of State under the official scheme, the number of seats in the Federal Assembly may be increased to the extent of ninety-eight, divided equally among the seven Zones. Out of them sixty should be reserved for British India and thirty-eight for Indian States. This distribution, however, is not to disturb the representation of the Muslims and other Minorities in the country.

**The Consti-  
tution of the  
Federal  
Assembly**

The Federal Assembly shall consist of 375 members, 250 belonging to British India and 125 belonging to the Indian States. The Muslim representation shall constitute one-third of the total strength of the Assembly. Other Minorities will have their shares according to the provisions of the Government of India Act, 1935. Indirect election to the Assembly will continue as the Federal Assembly shall be formed by all the representatives of the Regional Legislatures. The competence of the Assembly will extend over a carefully curtailed List of Federal subjects, such as Defence, External Affairs, Communications, Customs, Coinage and Currency. Other subjects included in the official Federal List are to be transferred to the units or Zones. Residuary powers regarding subjects not mentioned in the Federal List are to vest in the units, and in case of Zonal subjects, to vest in the Regional Legislatures. The Concurrent List in the Act shall be revised and curtailed. In the event of any doubt regarding the nature of a subject, the decision of the Viceroy will be final.

**Powers**

**Residuary  
Powers**

The Federal Legislature can also legislate in respect of subjects on the Concurrent List, if at least four Zones ask for it, but such legislation will apply only to those Zones. It can also be authorised by the Regional Legislatures to legislate with regard to Regional and Provincial subjects. If this authorization is to have any force, it must be backed by at least four Zones. Unless it is endorsed by all the seven Zones, such measures can apply only to those Zones which ask for it. Such laws shall be repealed, if at least three Zones demand it.

**The Federal Executive.**—The Federal Executive shall consist of His Majesty, represented by the Viceroy and Governor-General, and a Council of Ministers. The Council of Ministers is to consist of not less than seven and not more than eleven Ministers in number, including the Prime Minister. The last-mentioned will be appointed by the Governor-General from among the members of the Federal Legislature. Other Ministers will also be appointed from among the members of the Federal Legislature, but in consultation with the Prime Minister. Some specified rules shall be observed in the formation of the Cabinet. It must include at least one representative from each Zone; one-third of the members must be Muslims; and two Ministers if the total strength of the Cabinet is nine, or less than nine, and three Ministers if the total strength of the Cabinet is more than nine, must be chosen from among the representatives of the Indian States. There is, however, no objection to over-lapping between the representatives of the Muslim community and the States, provided their respective strength in the Cabinet is not reduced. Attempt should also be made to provide for adequate representation to other important Minorities. During the first twenty or fifteen years, two of the Ministers in charge of Defence and External Affairs may be nominated by the Governor-General from among the members of the Federal Legislature or from outside. The Ministers will hold office during the pleasure of the Governor-General.

The Ministers will normally remain in office for five years, which will be the normal term of the Federal Legislature. A Minister shall be removed, if he loses the confidence of the majority of the representatives of the Regional Legislature, which

Powers of  
legislation  
regarding  
subjects on  
the Concur-  
rent List

Composition

Representa-  
tion for the  
Muslims and  
the States

Ministers for  
Defence and  
External  
Affairs

Functioning

he represents. The whole Ministry, except the Ministers nominated by the Governor-General, shall resign, if a vote of no-confidence is carried against it in the Federal Legislature.

**Advisory Committees for Defence and External Affairs.**—Provision is made for the appointment of Advisory Committees for Defence and External Affairs. The former Committee shall consist of the Governor-General as President, the Ministers for Defence and External Affairs, the Prime Minister, the Finance and the Communication Ministers, the Commander-in-Chief, the Chief of the General Staff, a Senior Naval Officer, a Senior Air Force Officer, seven Regional representatives, five official experts to be nominated by the President, the Secretary to the Defence Department, and two non-officials to be nominated by H. E. the Viceroy. The latter Committee shall be constituted by H. E. the Viceroy as President, Federal Prime Minister, the Minister for External Affairs, seven Regional representatives to be selected by the President from among the members of the Regional Legislatures, two officials and two non-officials to be nominated by the Viceroy, and the Secretary for External Affairs. These Committees must include at least three members from the Indian States. If the number is less, the difference must be made up by the appointment by the President of additional members selected from a panel proposed by the Chamber of Princes.

The Advisory  
Committee  
for Defence

The Advisory  
Committee  
for External  
Affairs

Zonal Repre-  
sentation

**The Federal Railway Authority.**—It is provided that the Federal Railway Authority must include at least one representative from each of the seven Zones.

**Safeguards.**—The revised Constitution of India must include effective and adequate safeguards for the protection of the rights of the Minorities, the prevention of racial discrimination against British born subjects, against violation of treaty rights of the Indian States, against interference by the Federal or Regional governmental bodies in the sphere allotted to the Indian States and the Provinces, ensuring the safety of India against foreign aggression and peace and tranquillity in the country, prevention of subversive activities by the citizen of a unit or a Zone against another unit or a Zone, and for the protection of culture and religious rights of the Minorities.

Minorities,  
States' rights,  
racial dis-  
crimination,  
safety of  
India, and  
subversive  
activities

**Composition of the Indian Army.**—It is also proposed that the composition of the Indian Army, as it was on January 1, 1937, shall not be changed. If there is a change in the peace-time strength, the communal proportions in the Army as on January 1, 1937, shall not be disturbed. Of course this condition may be relaxed in the case of a war or any other grave emergency.

Not to be altered

**Criticism.**—Sir Sikandar's scheme has not so far been seriously considered by the parties concerned—the Indian people, the Indian States and the British Government. It is, therefore, not possible to say what will be its ultimate fate. Meanwhile, some politicians and constitutionalists have spoken, and, generally speaking, they do not support it. Some harsh words have been spoken about it. It has been damned as "a constitutional outrage," and a novel, impracticable, quixotic, and reactionary scheme. On the other hand, the author himself claims that it is calculated to remove all the economic, political, and communal ills of India. This is a high sounding claim. If it is true, must give a welcome relief to all patriotic Indians.

Opinion about the Scheme

The Author's claim

But on the face of it, the scheme is open to grave objections from the various points of view. The author of the scheme proposes to remove all our ills by the simple method of trying to concede the demands of the mal-contents. Himself belonging to the great minority community, the Muslim, and being a very prominent figure in the counsels of the All-India Muslim League, he may be presumed to be knowing the Muslim mind and the Muslim complaints and demands in respect of the official scheme of Federation. He has done his best to incorporate all such demands in his constitutional scheme so as to make it acceptable to his co-religionists. He has also promised that effective safeguards for other Minorities may also be incorporated in the scheme, thus trying to win them over. He has also tried to win over the Indian Princes by endeavouring to safeguard their autocracy for all times to come. Thus he tries to satisfy the Muslims and the Indian Princes. He, however, completely ignores the majority community, the Hindus, who have got their own objections to the official scheme from the communal point of view. The objections of the advanced political opinion in the country, as represented by the Indian National Congress and even

Conceding the demands of the mal-contents

The Muslims

The Princes

The Hindus

The Congress



A one-sided  
arrangement

by the National Liberal Federation, to the official scheme of Federation have been quietly passed over as no attempt is made in this scheme to liberalize and democratize the Constitution. Thus it may be concluded that the scheme does not solve the political and communal problem of India in all its bearings. It simply concedes the demands of two parties, the Muslims and the Indian Princes, while ignoring the demands of others. It is clearly a one-sided arrangement suggested by an interested party and does not possess the merits of an agreed solution.

Advantage-  
ous to the  
Muslims

As a matter of fact, the study of the scheme gives the impression that the author is more interested in disarming the opposition of one community to the scheme of Federation by not merely reasonably safeguarding its position but assuring it a dominating voice, than solving the problem that faces India. This is certainly objectionable from the point of view of other communities. This does not mean that the position of the Muslims should not be adequately safeguarded in any scheme of Federation, but that the pendulum should not swing too far on the other side. It must remain in the middle so as to safeguard the interests of all.

Safeguards  
for the  
Muslims

*Conceded*

Muslim  
representa-  
tion in the  
Legislature

Sir Sikandar proposes to remove the Muslim fear of Hindu domination at the Centre by incorporating a number of safeguards. The advantages, which the Muslims enjoy under the Communal Award of late Mr. Ramsay Macdonald, are kept intact. An attempt is made to give more by conceding the demand for 33% of the total membership of the Federal Legislature. It may be stated that the original Muslim demand, which has been conceded by the British Government was for 33% of British Indian representation. This Muslim demand for increased representation can obviously be at the cost of the Hindus, because the representation of all other communities and the states is to be kept in tact. How far it is fair to concede 33 per cent. representation to a community which is about 23% of the total population, is a question which must be considered by all justice loving people. At the same time it should not be forgotten that the majority community, which is already under-represented, is asked to make further sacrifices so as to be reduced to the position of a helpless minority. But, if, in the interests



of national unity, it becomes absolutely necessary to concede this demand of the Muslims, the proper way is not to reduce the representation of the Hindus from British India, but to have some sort of understanding with the Indian Princes so that as far as may be possible they should include Muslims among their representatives, whose number should approximately be proportionate to the Muslim population in their States. The Indian Princes, perhaps, will not be willing to limit their choice by a statutory provision or by any hard and fast rule, but a sort of convention or understanding should certainly be feasible.

In order to achieve this purpose further, Sir Sikandar proposes to have a weak Centre with very limited authority, to vest the residuary powers in the units and the Regional Legislatures, to have a statutory provision for the inclusion of a definite number of Muslim Ministers in the Federal Cabinet, to divide India into Zones so as to neutralize the Hindu majority and to continue the Muslim majority in the army. But, above all, he visualizes a subtle alliance between the Muslims, and other reactionary elements, and the States in the Federal and the Regional Legislatures so as to reduce the natural Hindu majority to a minority. Besides achieving this end, this alliance is bound to strengthen the forces of reaction, conservatism autocracy, and mediaevalism, which will prejudice the cause of India's progress.

Weak  
Centre

To bring about this alliance, the Indian Princes are offered a tempting bait. Their treaty and other contractual rights with the Crown are safeguarded. Presumably they are to be interpreted as the Princes want them to be interpreted and not in accordance with modern notions and the needs of the time. They are to be protected against subversive activities specially from outside their States. This means that they are not to be compelled in any way to introduce reforms in their States. There cannot be any better safeguard for perpetuating the mediaeval autocracy and feudalism in the States and condemning the helpless people of the States to their present miserable condition for all times to come. But the question may be asked, "Can the political clock be stopped from working in the States for all times?" Can we ignore the lessons of history? Will Sir Sikandar succeed where Metternich failed?

Bait to the  
Indian  
Princes

Appointment  
of the  
representa-  
tives of the  
Indian  
States

The States are assured of the representation allotted to them in the official scheme. The right of the Indian Princes to nominate their representatives to the Federal Legislature is virtually preserved. A long range scheme is proposed according to which, during the first ten years, only one-fourth of the representation allotted to a State is to be *selected* by the Ruler out of a panel to be elected by the State Assembly; during the next five years, only one-third is to be elected in the same way; during the next five years, only one-half is to be elected; and after that two-thirds are to be elected. Thus for twenty years, the States' representation is to be dominated by the whims of the Princes. Even after twenty years, one-third of the representation shall continue to be nominated by the Princes. Meanwhile the kind of election that is proposed to be introduced also leaves some scope for the exercise of princely discretion. Thus is democracy throttled in the States for all times. There is to be no full recognition of the rights of the subjects of the Indian Princes, whose autocracy can continue without a check. This is not all. It is further provided that the Federal Cabinet must contain two representatives of the Indian States, if its strength is nine. If it is more than nine, the number of the representatives of the States should be increased to three. This is a new and perhaps impracticable provision because it is not possible to foresee what party alignments will take place in the Federal Legislature. Even if it be practicable to have such a Cabinet, this perpetual injunction is bound to strengthen the forces of reaction, at the Centre.

Representa-  
tives of the  
States in the  
Federal  
Executive

The Federal  
Centre

Weak

The Federal Centre is deliberately made weak and impotent in relation to the constituent units of the Federation. This is done by cutting down the number of Federal subjects, practically transferring the Concurrent subjects to the control of the Regional Legislatures, and vesting the Residuary powers in the units. This has been done ostensibly to safeguard the autonomy of the units, but the real reason seems to be the Muslim fear of Hindu majority at the Centre. Whatever may be the reason, a weak Centre cannot fulfil the needs of India. It will be helpless to check the fissiparous tendencies which are already raising their ugly head and are retarding

the realization of the ideal of national unity. The Federal Legislature, that is proposed to be set up, will be unicameral instead of bicameral as provided in the Act. This has been done because there would be no necessity for the second House in view of the serious curtailment of powers of the Federal Legislature and the setting up of the Regional Legislatures. The House will have the total membership of 375, out of which only 105 will be Hindu seats and 207 will be combined Muslim and States' seats. Sir Sikandar is also willing to provide for representation to those interests, which will go unrepresented by the abolition of the Upper House, by increasing the membership of the Assembly thus making it all the more conservative. The Federal Legislature is also given certain powers to legislate with regard to Regional and Provincial subjects, but the attached safeguards make this power almost useless. The proposed Federal Executive is a strange medley of responsibility and irresponsibility and parliamentary and non-parliamentary systems. The dyarchy is kept in tact, thus not assuring complete transfer of responsibility to the Legislature. Presumably the Reserved and Special Powers of the Governor-General are to continue. Anyhow it is explicitly provided that the Governor-General will continue to nominate the Ministers for Defence and External Affairs. Even the Advisory Committees, which are proposed to be set up for the purpose, are packed with official majorities and can never be the true representatives of nationalist opinion in the country. Such measures are calculated to perpetuate British imperialism in the country and perhaps are meant to make the scheme acceptable to the British Government. Further the composition of the Federal Cabinet must follow certain well-defined rules. Every Zone must have at least one Minister. This Minister will be responsible as a member of the Cabinet to the whole House and also to the representatives of his Regional Legislature. He must resign if he loses the confidence of the latter. Thus he shall have two masters, who in practice will be very difficult to please at the same time. Coming to the composition of the Cabinet, it is provided that at least one-third of the Ministers must be Muslims, and at least two or three, according to whether the total strength of the Cabinet is less or

The Federal  
Legislature

The Federal  
Executive

Composition:

more than nine, should belong to the Indian States.  
It means that

Advantage-  
ous to the  
States and  
the Muslims

" If the Cabinet is to consist of 7 ministers, 3 of them must be Muslims and 2 representative of the Princes, leaving the Hindu community to be represented by the remaining 2. If the number is 9, as provisionally fixed by Sir Sikandar, the number of Muslim ministers will be 3 and that of the Princes representatives will be 2. Lastly if the number is to be 11, the number of Muslim ministers is to be 4 and that of the Princes representatives 3, thus totalling 7 in a Cabinet of 11. In all cases and under all circumstances, therefore, the Muslims and the Princes together are to have a clear and decided majority in the Cabinet as against the representatives of the majority community. This is safeguarding the interests of the minorities and the Princes with a vengeance."

Demerits of  
the proposal

It may be noted here that it is permissible under the scheme to select Ministers, who can be counted at the same time in the minimum quotas assigned to the Muslims and the States; but this will perhaps be violating the spirit of the scheme. There is another danger. Suppose the Prime Minister happens to be a Hindu. In order to have a maximum number of Hindu Ministers in a Cabinet of nine, he sees that the two Ministers, who are selected from the States, are Muslims. He selects another Muslim Minister to represent British India. The remaining six Ministers will then be Hindus. Will this be liked by the Muslims of British India? Will it be fair to them and the States? Moreover, under such an arrangement the Hindu States will go unrepresented and British Indian Muslims will have only one minister to represent them. Is it equitable? But perhaps the author of the scheme thinks that an alliance between the Princes' representatives and the Muslim representative, will command a majority in the House which may make a Muslim Prime Minister possible. In doing this, he is clearly ignoring the possibility that under the prevalent communal conditions some of the Hindu States may consider it safer to have an alliance with a Hindu party in the House than to join the Muslim party. In that case the above-mentioned contingency can arise. But apart from these communal considerations, it is not difficult to see that, with the given conditions and restrictions, it will be well-nigh impossible for any party leader to form a Party Cabinet, and if somehow he succeeds in forming it, he cannot carry on for a long time.

Party  
Government  
cannot  
function

Then comes the division of India into Zones or Regions. Regarding it Sir Sikandar himself claimed:

\* *Tribune*, dated July 30, 1939.

"There were several such schemes based on communal considerations, but my scheme is based on economic and administrative interests as well as affinity of languages and geographical considerations. These considerations would bring the various federating units together and federation based on zonal basis would command co-operation and *esprit de corps* among the units."

Zonal  
division of  
India

Advantage

\* Others, however, do not accept this claim. For instance, Sir Jogendra Singh state in a statement on July 9th 1939—

"He (Sir Sikandar) does not say so, but it is evident that under the cover of demarcating provincial boundaries, he wishes to carry out redistribution of population and divide India into Muslim and Hindu India."

Disadvant-  
age

Taking up the actual Zonal division, it is found that it is neither non-communal nor scientific. In the first Zone, he wants to transfer a few predominantly Hindu Districts in Western Bengal to Orissa so as to reduce the Hindu majority. In the Regional Legislature of this Zone, the Muslims, the States, the Europeans, and the Anglo-Indians can easily command between them 26 seats in a House of 50. To the second Zone, he adds the States of Bikaner and Jaisalmer for some unknown reason. In the Regional Legislature in this Zone, the above-mentioned combination will command 43 seats in a House of 61. Moreover the effect of the advantage to the Congress of its rule over the North-West Frontier Province will be easily offset. To the third Zone of Bombay and Hyderabad are added the States in Central Provinces, which do not possess geographical contiguity with other units in this Zone. In the Regional Legislature of this Zone, the Muslims-cum-Europeans-cum-Anglo-Indians-cum-States combination will command 53 seats out of a total strength of 75. In the fourth Zone are included the Bihar States which lack geographical contiguity with other units in the Zone. In the Regional Legislature of this Zone, the abovementioned combination will command 40 seats out of the total strength of 56. In the remaining three Zones, the Hindus are likely to command a majority. Thus it is clear that the Zonal division is calculated to keep the Hindus in a perpetual minority in at least four Zones. It is clear that Sir Sikandar

Neither non  
communal  
nor  
scientific

Hindus in a  
perpetual  
minority in  
the four  
Zones

\* Bombay speech, July 4, 1939.

is trying to perpetuate permanent communal majorities and minorities which will foster communalism rather than destroy it.

The Regional  
Legislatures  
superfluous

Moreover the establishment of the Regional Legislatures is nothing better than introducing a wheel within wheels. Perhaps they represent the superfluous fifth wheel. They are intended to serve as clogs in the way of the functioning of the organs of the Federal Government. The conditions, which are put on their working, will not allow them to achieve anything useful. Particularly the law of three-fourths majority will stand in the way of its accomplishing anything. Further it is not clear how these Legislatures will function without executives.

The  
composition  
of the Army

Lastly Sir Sikandar proposes to maintain the present day strength of the Punjab, the Indian army, which incidentally means a predominant position for the Muslims. We have already referred to\* the economic aspect of the question as far as the Punjabis are concerned. But by insisting on this advantage, the Punjab is accepting a tremendous responsibility for the defence of India, as about 75% of the army at present belongs to the Punjab. In the days to come, the Punjab may not be able to discharge this responsibility properly because on account of the development of aerial and naval warfare, other parts of India have also become vulnerable from the enemy point of view. From the national point of view, it is absolutely essential that the people of other Provinces must get military training and must be made to bear responsibility for the defence of at least their parts of the country.

Summary

To sum up, it may be stated that Sir Sikandar's scheme visualizes an alliance between the reactionary forces in the country, and thus makes the Constitution ultra conservative and thoroughly reactionary. It is likely to perpetuate communalism. It does not promise *Swaraj* to the country. It perpetuates almost all the defects of the official scheme. Dyarchy at the Centre is preserved. Responsibility is incomplete and halting. Indirect election to the Federal Legislature is not abolished. Objectionable economic and financial provisions are

\* See page 40.

to be kept intact. Moreover it introduces new objectionable features in the establishment of the Zonal divisions, the Regional Legislatures, the composition of the Federal Legislature and the Federal Executive and the powers given to them. All these defects make Sir Sikandar's scheme constitutionally unsound and administratively unworkable. Sir Sikandar declared that his scheme could be adopted without disturbing the official scheme. It is clear that it is not possible because the Act provides for a bicameral Legislature and not for the proposed unicameral Legislature. The allotment of one-third representation of the whole House to the Muslims involves a change in the terms of the Communal Award, which cannot be done without mutual agreement. Lastly the establishment of Regional Legislatures is not provided for in the scheme of the Act.

Involves  
changes in  
the Act.

The merit of the scheme is that it proposes to preserve the unity of India by the establishment of a Federation of India. But the actual scheme is rather defective and with a weak Centre establishes a Confederation rather than a Federation. According to Sir Jogendra Singh,\*

The Merits  
of the  
Scheme

Unity of  
India

" Sir Sikandar Hayat Khan's speech on Federation gives an impression as if he was defining night by darkness and death by dust. He admits that Federation is essential for India, but this admission is like keeping the word of promise to the ear and breaking it to the heart."

Another good point is that Sir Sikandar wants the immediate grant of Dominion Status. This is certainly a wise suggestion, and is bound to be approved by the vast majority of the Indians. But even here, by Dominion Status Sir Sikandar seems to understand merely an independent autonomous status in the Commonwealth and not the establishment of democratic self-government in the country. Objection is bound to be taken to this. It may, however, be noted that if the communal problem in the country is to be solved, the distrust of the Minorities shall have to be removed by conceding some of the safeguards mentioned by Sir Sikandar. At least his suggestion of dividing India into Zones or Provincial Blocks with evenly balanced communal strengths is worth considering. This will certainly reduce Hindu majorities, but the Hindus who claim to be nation-

Grant of  
Dominion  
Status

The merit  
of the  
division into  
Zones

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\* Statement, issued from Simla, July 9, 1939.

alists while calling the Muslims communalists, should not be afraid of an arrangement under which the communal proportions are evenly balanced, if this banishes communalism from the country. If that desirable consummation takes place, the question of Hindu and Muslim will go and the Government will be national. All well-wishers of the country, however, must see that under this device the forces of reaction and communalism are not firmly put in the saddle.

The Unity of  
India

**The Merits of the Official Scheme.**—As compared with these schemes, the official scheme has decidedly certain merits. It assures the fundamental unity of India. His Excellency the Viceroy stated in a speech at Calcutta on December 19, 1934, as under:—

Political  
Unity

"In framing the Federal Scheme, we had in view in the first place as a consideration of dominant importance, the unity of India. The decisive weight of that factor calls for no argument to-day. Nor do I see any scheme that holds out a greater hope for the achievement of the political and constitutional unity of this great country than the scheme of the Act."

Instead of helping the growth of two or even more nations in India, it is devised with the idea of bringing the different communities together under one political system. In a striking contrast to the zonal schemes, it preserves the geographical unity of India. It also safeguards the economic unity of India. Again in the words of His Excellency the Viceroy.

Economic  
Unity

"But the achievement of that scheme cannot, in my judgment, but tend to harmonise the interests of all parties without material injury to any; to weld together from the economic and fiscal point of view, in a manner and to an extent which could not otherwise be looked for, the Indian States and British India; and to ensure the alleviation of that lack of unity which, whatever its historical explanation, cannot in this sphere but strike the observer as calculated to reduce efficiency, and to hamper the development of India's natural resources, and of her commercial and industrial opportunities."

Advance  
towards  
Dominion  
Status

Although no mention of Dominion Status is made in the Act, yet it may be hoped that the success of the scheme is likely to advance India nearer to her constitutional goal. There cannot be two opinions on the point that if India is to advance a further stage towards full responsible self-government, Federation must come. Coming to the internal structure of the scheme, the successful working of Provincial Autonomy encourages the belief that the Federal scheme is constitutionally sound. With certain changes or certain understandings and conventions, the scheme can be made to work. It is the result of the balancing of the forces of advance and conservatism, and under certain favourable conditions

Constitutionally  
Sound

Balance of  
forces of  
conservatism  
and advance



can be utilized for the good of the country. By introducing Central Responsibility, however inadequate it may be, it marks an advance on the present conditions, under which an out and out irresponsible executive functions. It is more likely to encourage the growth of a sound system of parliamentary government than the other schemes in the field, because it does not contain some of the impossible conditions regarding the composition and functioning of the Federal Cabinet included in the other schemes. Under this scheme, the Central Government will be fairly strong so as to check the growth of fissiparous tendencies and to preserve the unity of government for the whole country. The provisions regarding the administrative relations between the Centre and component units, the Federal Court, the High Courts, and the Public Service Commissions are sound. Lastly the scheme is not a one-sided thing. It is the result of the labours of politicians belonging to all communities and schools of thought. The very fact that it is being criticised by almost all interests proves that it does not assure the domination of any one particular interest.

Central  
Responsibil-  
ity

Strong  
Central  
Government

Some Sound  
Provisions

Does not  
assure the  
domina-  
tion of  
any one  
particulaar  
interest

**Demand for Amendments.**—This, however, does not make the scheme acceptable to the nation. The defects of the scheme are so serious and glaring that no political party can think of accepting the responsibility for working it. It will be very difficult for any party to give a practical shape to its programme and catch the imagination of the masses. It is for this reason that an amendment of the scheme is asked for. The Amending Bill can *inter alia* provide for a declaration in the Preamble granting Dominion Status to India, abolition of dyarchy at the Centre, or devising an arrangement by which the administration of Defence and Foreign Affairs is made largely subject to the will of the Legislature, the abolition of the Ecclesiastical Department, the appointment of the Consellers, the Financial Adviser, and the members of the Railway Authority on the advice of the Federal Cabinet, associating Indians with the administration of the Department of Defence, formulating a scheme for the Indianization of the Indian army in a short period, the grant of the same rights in respect of External Affairs as are enjoyed by the Dominions, substitution of direct election for the Lower House, taking away the powers of purse from the Upper House, abolition of

Need for  
amendment

Where  
amendment  
is necessary

~~abolition~~ the system of separate communal electorates, of course by the consent of the parties concerned, the abolition of the Governor-General's Special Powers, abolition of all commercial safeguards, bringing currency, exchange, and railways under the control of the Federal Ministers, the selection of the representatives of the States by election, and for assuring fundamental rights of citizenship to the subjects of the Indian States. These changes will make the Constitution democratic in structure and national in outlook and, therefore, acceptable to the vast majority of the people of the country. The British Government however, is not in a mood to amend the Constitution as it will mean reopening the whole Indian Question at a time when the British Empire is engaged in a serious conflict with Nazi Germany. This does not sound convincing to some, because the British Government has only recently sponsored the India Act Amending Bill through Parliament, assuring greater powers to the Central Government in the event of an emergency caused by war. Considering everything it may be accepted that the present war atmosphere is not an opportune time for amendment of the Government of India Act, 1935. But the actual amendment can wait, if the need for it is recognized.

Effect of the amendments

Amendment not possible at this time

Boycott of the Scheme

Dangers involved

**Wrecking the Constitution.**—Supposing the British Government refuses to amend the Act before it is actually worked. What, then, should be the attitude of nationalist India? Should it adopt the policy of non-co-operation and boycott the scheme when it is enforced? Nationalist India had an experience of that kind of non-co-operation, when it boycotted the Montford scheme of government. That experience is certainly not encouraging. The essential condition for the success of non-co-operation and boycott is that it must be complete. If the whole nation decides not to work the scheme, the scheme is bound to prove still-born. But in India, there is no dearth of reactionaries, careerists, opportunists, and traditionally loyalist people who would come out of their obscurity and work the Constitution either for self-aggrandisement or for obliging the British Government. They will try to strengthen their position by strengthening reaction and checking the progressive elements. The Right Honourable Mr. V. S. Sastri once rightly observed :—

"There is no standing still. If places are not filled by the right men, they will be filled by the wrong men. If things are not done well, they will be done badly."

Thus non-co-operation and boycott cannot serve the interests of the nation. Should, then some method be adopted to wreck the Constitution? Here there can be scope for a genuine difference of opinion. Extremists consider it as the only effective method of putting pressure, but statesmen with constructive bent of mind shudder to think of the consequences of plunging the country into another struggle which may result in anarchy. The question can only be decided by the statesmen in whose hands lie the destinies of the Indian nation. Nevertheless we can examine here the strategy of those who may try to wreck the Constitution.

Wrecking  
the  
Constitution

In the first instance, it is suggested that the British Indian Provinces, specially the Congress-governed Provinces, should refuse to join the Federation. Those who suggest this forget that no option is left to the Provinces regarding joining the Federation. Under the Act, they must join the Federation, whether they like it or not. If, however, all the parties in the Provincial Legislatures refuse to elect their representatives, the Federal Legislature cannot come into being. This is not possible because some of the opposition parties in the Congress-governed Provinces, the Hindu Sabha parties in all the Provincial Legislatures, and possibly some Muslim parties, specially in Bengal and Punjab, are likely to take part in the elections to the Federal Legislature. Thus this cannot succeed. Then the next suggestion is that the Congress should fight the elections to the Federal Legislature and then refuse to form the Ministry. This pre-supposes that the Congress will be able to command singly an absolute majority in the Legislature, which is not likely to be the case. It may be able to have a working majority by winning over some other members or parties, if it decides to accept office, but it is not likely to have a permanent majority, if it refuses to accept office and work for the good of the masses. But even supposing that the Congress party is in majority in the House but refuses to form the Cabinet, then what is likely to take place is the repetition of what took place in the Provinces, viz., the

Strategy of  
wrecking the  
Constitution

The  
Provinces  
cannot  
refuse to join  
the  
Federation

Refusal by  
the  
Provincial  
Legislatures  
to elect their  
representa-  
tives

Refusal to form the Ministry	appointment of an <i>interim</i> minority Government. Meanwhile the Congress can take recourse to direct action. The Congress Provincial Governments refuse to co-operate with the Federal Government in suppressing the movement in the Provinces. They are asked to quit by the Governors under instructions from the Governor-General. Their places are occupied by minority Governments with reactionary outlook. The movement of direct action is intensified in the country. The British imperialism utilizes the Indian Governments, both at the Centre and the Provinces, to suppress the movement. This further divides the nation, causes mutual bitterness, and excites communal passions leading to communal strife. The interests of the nation suffer, and yet the Congress may not gain the point. It may be argued that if the Congress and the Muslim League, which is also opposed to the Federation, arrive at some understanding and start direct action against the establishment of the Federation, they are bound to carry the day. If this happens, there will be no need of direct action because the British Government may be credited with enough good sense not to court sure failure by imposing the unwanted Constitution in face of the united opposition of the Congress and the Muslim League. Thus it may be concluded that although considerable political pressure can be applied by direct action, yet in the state of present day party politics it is very difficult for the Congress to wreck the Federal scheme. Moreover the adoption of this course will encourage fissiparous tendencies, which are likely to undo the work of the Congress for national solidarity.
The Crisis	
Results	
Alliance between the Congress and the Muslim League	
Conclusion	

**Need for Constitutional Conventions.**—If the Congress cannot succeed in wrecking the Constitution should it accept and work it? This is clearly not possible in view of the clear position of rejection of the Federal scheme taken by the Congress. Moreover on account of the inadequacy of political power that the scheme will place in the hands of the popular Ministers, the Congress Ministers will not be able to fulfil the hopes and ambitions of the Indian masses. This will result in the Congress party losing its hold on the Indian masses. The only way out of the dilemma is to agree to work the Federation after amendments, if possible, and if that be not

Way out of the dilemma

possible, after some mutually agreed constitutional conventions and understandings. These conventions can be so framed that they shall have the effect of transferring the substance of power to the hands of the responsible Ministers and of removing some obnoxious features. If an understanding can work well in the Provinces, there is no reason why it should not work at the Centre.

Constitutional Conventions

Some sort of understanding on the lines of the Provinces can be arrived at with the Governor-General in respect of the exercise of his Special Powers and Responsibilities. There should not be any objection to his accepting the advice of his Ministers in respect of his Special Responsibilities, if that advice is within the four corners of the Constitution. This can, of course, be made ultimate, by subject to his power of disagreement and dismissal. In respect of External Affairs, it may be understood that subject to imperial considerations, the views of the responsible Ministers will generally prevail. In matter of Defence, the Ministry can also be consulted. A part of the "expenditure on Defence" can be made subject to the vote of the Federal Legislature. Moreover the Reserved and the Transferred spheres of Government should function as one unit. The Counsellors of the Governor-General can be technically appointed by him on the advice of the Ministry. No provision of the Act is contravened, if these Counsellors come in and go out of office with the Ministry on whose advice they are appointed. The Financial Adviser, the Advocate-General, and the members of the Railway Authority can also be appointed on the advice of the Ministry. An assurance can be given that the commercial and other safeguards will not be used against the clear interests of India. The Indian Princes can be prevailed upon to allow at least a part of their representatives to be elected by their subjects. These understandings can make the Act workable and acceptable. There is nothing in the Act that seems to stand in the way of these understandings. In the interests of the Empire and India, a Gentleman's Agreement on these lines should be arranged between the British Government and the leaders of the Indian people.

Where they are possible

Special Powers of the Governor-General

Reserved Departments

Appointments on the advice of the Ministry

Commercial Safeguards

Election of the States' representatives

A Gentleman's Agreement

**The Opposition of the Muslim League.**—Besides the Congress, the other parties, which are opposed to the

Need for •  
Conciliating  
the Muslims

Meeting  
Muslim  
Demands

Position  
obscure;

Reasons for  
their  
opposition

Federal scheme, are the Muslim League and the Princes. The view point of the Muslim League has already been examined. It must suffice to say here that there is a genuine apprehension among some Muslim politicians regarding the safety of Muslim interests under the Federation. In the interest of mutual goodwill and national unity, a serious attempt should be made to remove this apprehension by having some mutual understanding. If it be necessary for the purpose, some more reasonable safeguards may be conceded to the Muslim community. The Princes of Hindu States may be prevailed upon to give an understanding that a reasonable number of Muslims will always be included in the representatives nominated by them. This will tend to increase Muslim representation in the Federal Legislature so as to make it as nearly as possible one-third of the total strength of the House. The Muslims can also be assured that a reasonable number of Muslims will always be appointed in the Federal Cabinet. A trial may also be given to Mr. Jinnah's proposal of a composite Cabinet after certain clear understandings regarding the policy and programme to be followed.

✓ **The Opposition of the Princes.**—Although the suggestion for the Federation of India originally came from the Indian Princes, yet even they feel reluctant to accede to the Federation under the present scheme. Only recently a meeting of the Chamber of Princes at Bombay declared the Instrument of Accession to be unsatisfactory. A number of conferences and mutual consultations between the Governor General and the Princes do not seem to have satisfied the latter. The position regarding their entry, therefore, remains obscure though it is hoped that the requisite number out of them will be coming forward to join the Federation. The reluctance of the Princes to join the Federation is due to their disappointment with the official scheme. They had hoped to limit paramountcy by this means, at the same time preserving the notions of their own sovereignty. This they have failed to secure. Moreover they feel that they will be in a permanent minority in the Federal Legislature and that an individual State in it will merely be an insignificant drop in the ocean. They will not be in a position to have an effective voice in the formation and composition of the Federal Executive. Moreover they cannot get any protection

from the Federal Court against the pressure of Paramountcy. This criticism obviously assumes that the States and the British Indian Provinces will always range themselves in separate and exclusive blocs, which is not likely to be the case. It is hoped that the party lines will cut across these distinctions so as to have parties, with mixed membership, and with programmes that will take note of needs and desires of different interests.

But there is no denying the fact that the Princes really feel that their rights and interests—personal, dynastic, and of the States, are not adequately safeguarded. They, therefore, demand changes in the Instrument of Accession, embodying safeguards guaranteeing their financial, economic, and political interests. It is believed that they also demand a creation of a special police force by the Crown Representative, which should be used to protect them against subversive movements from British India, when the neighbouring Provincial Government may refuse to intervene. In the absence of full information, it is not possible to make concrete suggestions. But the States should realize that the whole Federal scheme has been devised to safeguard their interests and is advantageous to them. If they remove the distrust of the British Indian politicians, they will find that they do not lose anything by entering the Federation. If, however, they miss the occasion now, nobody can foresee what kind of situation might develop in the future. The rapidly increasing strength of the democratic movements both inside and outside their States certainly point out ominous forebodings for their point of view. In future even the Paramount Power may not be able to help them against their own subjects, and with the active sympathy of the popular governments in British India, the popular movements may prove too strong for the resources of the States. In that case their interests are bound to suffer more than by joining the Federation at this time. Now British India wants them because without them the dream of a united India cannot be realized. In the words of Sir Jogendra Singh,\*

New  
Demands

Warning to  
the States

Why British  
India desires  
their entry

"India can only become an organic whole if the provinces and the States federate and create a living, thinking percipient

---

\* Letter to the *Manchester Guardian*.

entity capable of formulating and carrying out a purposeful policy. It is only then that India could take her proper place among the nations of the world."

Thus the Princes will do well in giving a favourable response by joining the Federation of India.

Irresponsible  
Centre and  
Responsible  
Provinces

**Need for Immediate Action.**—In view of the dangers present in the body politic of India, the Federation of India must be established immediately. With an irresponsible Centre controlling responsible Provinces, India is now in an impossible condition. It is clear that the structure is incomplete, and until it is completed immediately by substituting an elected responsible government at the Centre, there is a real danger to the whole structure. The cracks have already begun to appear and there is a real danger of collapse under pressure. This must be avoided if the country is to be saved. The delay between the inauguration of the Provincial Autonomy and the establishment of the Federation has already let loose forces of separatism, provincialism, and antagonism between the States and the British Indian Provinces. The ideal of national unity is being driven to the background and ideas of division are coming to the fore. The various schemes for the division of India into communal Zones are indications of this tendency. If these dangerous forces are to be suppressed and the ever widening gulf that divides a community from a community and a unit from a unit is to be bridged, Federation must be established immediately. Even from the economic point of view, there is an imperative need for the Federation of India as no complete scheme of national planning can be formulated without it. Moreover the problem of Indian defence cannot be properly solved without an all-India responsible government.

Fissiparous  
tendencies

Economic  
necessity

Defence

The shadow  
of War

**The Present Position.**—It must be said to the credit of His Excellency the Viceroy that he was doing everything possible to expedite the establishment of the Federation of India in the shortest possible time. Federation was a very live issue of Indian politics; but the War has now come. The British Commonwealth of Nations has declared war against Nazi Germany in defence of a weak nation, *viz.*, Poland, which has become a victim of unprovoked aggression. This overshadows everything and so the issue of Federation has been pushed into the background. India has to play her part in this War.



She won the Montford Reforms on the battlefields of France and Western Asia ; she has now been afforded another opportunity to do the same. It is to be hoped that she will not lose it and will show to the world and the British people that she can be trusted to play her part bravely and nobly.

Various proposals have been put forward for carrying on the machine of the Central Government during the period of the War. It has been suggested that a sort of provisional Federation should at once be set up to carry on the administration during the period of emergency. As this Federal Government will be enjoying the confidence of the people, it will be able to get the utmost out of them for the prosecution of the War. Meanwhile Mahatma Gandhi has pleaded for the establishment of a voluntary Federation.

So far no decision has been taken on this point. Meanwhile the Central Government has adopted energetic measures to meet the emergency. A number of Ordinances, including the Defence of India Ordinance, has been issued to meet the situation.

**Suspension of the Work regarding Federation.**—The War has necessarily put everything in the background. Nobody can deny the urgency of attending to the situation created by the War with single-minded purpose. His Excellency the Viceroy, therefore, announced the suspension of the work in connection with the preparations for Federation in a speech before the Central Legislature on 11th September, 1939. His Excellency observed—

"I will add only one word more in regard to our Federal preparations. Those preparations, as you are aware, are well advanced, and great labour has been lavished on them in the last three years. Federation remains as before the objective of His Majesty's Government ; but you will understand, gentlemen, without any elaborate exposition on my part, the compulsion of the present international situation, and the fact that given the necessity for concentrating on the emergency that confronts us, we have no choice but to hold in suspense the work in connection with preparations for Federation, while retaining Federation as our objective."

It has been suggested that besides the demands of the War situation, the suspension of the work regarding Federation is due to the suggestion of some eminent political leaders. Whether this suggestion is based on fact or not, it is clear that at this time "it is

India's duty

Provisional  
Federation

A Voluntary  
Federation

Ordinances

The "Com-  
pulsion" of  
the War  
situation

His Excel-  
lency's  
Remarks

Effects of  
the  
suspension

obviously impossible to press on with the final and most controversial stages of Federation during the present crisis."\* This step is calculated to subside for the time being the political passions that had arisen on account of the doubts entertained about the utility of the Federal scheme from the national and the communal points of view. It also allays the fears of the Princes over Federation. Thus the Princes and the people of India can now rally round the British Government in face of the common peril.

No Perma-  
nent  
solution

This, however, is no permanent solution of the Indian problem. With responsible Provinces and irresponsible Centre, India is in an impossible condition. There are clear signs of discontent and dissatisfaction with the present state of affairs. The suspension of the work regarding the Federation leaves the political structure incomplete and creates a political vacuum. This vacuum must be filled. The idea of Federation, the only practicable road to Indian union and Indian nationhood, has, therefore, not been abandoned. Even the scheme adumbrated in the Government of India Act, 1935, still holds the field. But this cannot satisfy India. She wants a Federal scheme of her own making and after her own heart. This suspension can only be of use to her, if that desire is fulfilled. According to the *Tribune*,† Lahore, the "compulsion" of the international situation—

The Federal  
Scheme still  
holds the  
field

India's  
desire and  
hope

"has for the moment, at any rate, enabled the British Government to steer clear at once of Scylla of imposing an unwanted scheme on India and of the Charybdis of abandoning altogether a scheme on which their heart was set. More than that. It has given them a breathing space, which if they are wise they can utilize for the purpose of arriving at an understanding with political India and devising a new scheme based on that understanding."

It remains to be seen whether this will be done. Meanwhile political India will remain in a state of animated suspense.

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\* London *Times*, September 12, 1939.

† Dated, 13th September, 1939.

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